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ABSTRACT

This 3-year state plan presents Colorado's proposals for special education in compliance with the Individuals with Disabilities Education Act and state laws. Preliminary information certifies compliance with standard submission, certification, policy, and procedure requirements. The bulk of the document addresses how federal funds are to be used. Colorado's policies and procedures are presented in terms of the following substantive requirements: right to education; free appropriate public education; full educational opportunity goal; policies on priorities; location, evaluation and identification of children with disabilities; procedural safeguards; impartial due process hearings; confidentiality; protection in evaluation procedures; least restrictive environment; educational surrogate parents; participation of private school children placed by their parents; placement in private schools by the administrative unit or other public agencies; the Colorado Department of Education annual program evaluations; enforcement of State Education Agency policies and procedures; recovery of funds for misclassified children; use of funds available under other federal programs; consolidated applications; notice and opportunity for hearing on Local Education Agency application; comprehensive system of personnel development; additional requirements; interagency agreements; and monitoring system. (DB)

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Individuals with Disabilities Education Act, Part B, as Amended by Public Law 94-142. Colorado State Plan, Fiscal Years 1992-94.

Colorado Department of Education
201 East Colfax Avenue
Denver, CO 80203

May, 1991

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PART I

SUBMISSION STATEMENTS

AND ASSURANCES

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0030, Washington, D.C. 20503.

Part I - Submission Statements and Certification

A. SUBMISSION STATEMENT

I, the undersigned authorized official of the State educational agency of COLORADO, hereby submit the following State Plan for Fiscal Year 1992-94 under Part B of the Individuals with Disabilities Education Act.

William Randall
Signature of Authorized Official

5/14/91
Date

William T. Randall
Commissioner of Education
Type Name and Title

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The State of Colorado makes the following assurances and provisions as required by Part B of the Individuals with Disabilities Act, as amended (20 U.S.C. 1411-1420):

I. In carrying out the requirements of 20 U.S.C. 1412, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities (20 U.S.C. 1412(7)(A)).

II. Programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 and section 202(1) of the Carl D. Perkins Vocational Education Act, under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs (20 U.S.C. 1413(a)(2)).

III. Federal funds made available under the Act: (A) will not be commingled with State funds; and (B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the control of State or local educational agencies) expended for special education and related services provided to children with disabilities and will in no case be used to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive in part the requirement of this clause if the Secretary concurs with evidence provided by the State (20 U.S.C. 1413(a)(9)(B) and 20 U.S.C. 1414 (a)(2)(B)(ii)).

IV. The State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in, or concerned with, the education of children with disabilities, including handicapped individuals, teachers, parents or guardians of children with disabilities, State and local officials, which: (A) advises the State educational agency of unmet needs within the State in the education of children with disabilities; (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with

disabilities, and the procedures for distribution of funds under the Act; and (C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under 20 U.S.C. 1418 (20 U.S.C. 1413(a)(12)).

V. Part B of Individuals with Disabilities Education Act will not be construed by the State to permit the State to reduce medical or other assistance available under, or to alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

C. GENERAL STATE APPLICATION - EDGAR ASSURANCE

The State educational agency provides assurances that it will comply with the provisions contained in 34 CFR 76.101.

D. CERTIFICATION REQUIRED BY EDGAR

In accordance with 34 CFR 76.104 the State educational agency assures:

1. That the Plan is submitted by the State agency that is eligible to submit the Plan.

2. That the State agency has authority under State law to perform the functions of the State under the program.

3. That the State legally may carry out each provision of the Plan.

4. That all provisions of the Plan are consistent with State law.

5. That a State Officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the Plan.

6. That the State Officer who submits this Plan, specified by title in the certification, has authority to submit the Plan.

7. That the agency that submits the Plan has adopted or otherwise formally approved the Plan.

8. That the Plan is the basis for State operation and administration of the program.

COLORADO
(State)

E. EXECUTIVE ORDER 12372

This State certifies that:

To the best of our knowledge and belief, data in this State Plan are true and correct, the document has been duly authorized by the governing body of the State education agency and the State will comply with the attached assurances if the State Plan is approved.

The State Plan was submitted to the State's "single point of contact" under Executive Order 12372 on 03/07/91
(Month/Day/Year)

F. PUBLIC PARTICIPATION (34 CFR 300.280-300.284 and 34 CFR 76.101 of the EDGAR)

Documentation that public hearings have been held and that the Plan has been made available as required should be included in this section. (See cover memo for further details.)

PLEASE SEE APPENDIX D.

PART II

SUBSTANTIVE REQUIREMENTS

A. POLICIES AND PROCEDURES AND DESCRIPTIONS

Part II - Substantive Requirements

A. POLICIES, PROCEDURES, AND DESCRIPTIONS

The FY 1992-94 State Plan must be a complete, intact document which includes all of the provisions listed below. States shall provide policies and procedures which they have adopted which implement the provisions below. (NOTE: Policies and procedures should include details of how requirements will be implemented.) States may include in their State plans for FY 1992-94 those portions of their current State Plan which they wish to retain and which are in full compliance with the Part-B regulations. States should submit the following overview with their plans. Under Column A, please indicate with a check the policies and procedures that are being revised in the FY 1991-93 State Plan. Under Column B, please give the page numbers in the FY 1992-1994 Plan for each of the provisions listed below.

		(Column A) Change from FY '89-91 Plan	(Column B) Page in FY '92-94 Plan
1.	Right to Education Policy Statement (20 U.S.C. 1412(1); 1412(2)(B); and 1412(6); 34 CFR 300.121-300.122)	X	Page 1 - Throughout
2.	Full Educational Opportunities Goal (20 U.S.C. 1412(2)(A); 20 U.S.C. 1418(b)(6); 34 CFR 300.123-300.126) (See Footnote #1)	X	3 - 5
3.	Child Identification (20 U.S.C. 1412(2)(C); 34 CFR 300.128)	X	23 - 31
4.	Individualized Education Program (20 U.S.C. 1412(4); 34 CFR 300.130)	X	6 - 21

1 Full Educational Opportunities Goal. Data requirements for 34 CFR 300.124-300.126 are met through the submission of the State Plan, the Annual Data Report, and the Annual Performance Report.

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5.	Procedural Safeguards (20 U.S.C. 1412(5)(A) 34 CFR 300.131)	X	32 - 58
6.	Least Restrictive Environment (20 U.S.C. 1412(5)(B); 34 CFR 300.132) (See Footnote #2)	X	72 -81
7.	Protection in Evaluation Procedures (20 U.S.C. 1412(5)(C); 34 CFR 300.133)	X	69 - 71
8.	Comprehensive System of Personnel Development (20 U.S.C. 1413(a)(3); 34 CFR 300.139) (See Footnote #3)	X	116 - 142
9.	Participation of Private School Children (20 U.S.C. 1413(a)(4)(A); 34 CFR 300.140; 34 CFR 76.650-76.662)	X	91 - 95
10.	Placement in Private Schools (20 U.S.C. 1413(a)(4)(A); 34 CFR 300.140)	X	96 - 98
11.	Recovery of Funds for Misclassified Children (20 U.S.C. 1413(a)(5); 34 CFR 300.141)	X	108 - 109
12.	Notice and Opportunity for Hearing on LEA Application (20 U.S.C. 1413(a)(3); 34 CFR 300.144)	X	113 - 115

2 Least Restrictive Environment. Data requirements for 34 CFR 300.132 are met through the submission of the Annual Data Report.

3 Comprehensive System of Personnel Development. It is not necessary to include in the State Plan tabular data on personnel employed and personnel needed. These data are now submitted in the Annual Data Report.

13.	Annual Evaluation (20 U.S.C. 1413(a)(11); 34 CFR 300.146)		
14.	Additional Requirements (See Footnote #4)		
	a. Responsibility of SEA for Education Programs (20 U.S.C. 1412(6); 34 CFR 300.134)		
	b. SEA Monitoring Procedures (34 CFR 76.101; 34 CFR 300.128(b)(5); 300.130(b)(2), 300.402(a); 300.556)	X	153
	c. Policies and Procedures for Use of Part B Funds (20 U.S.C. 1413(a)(1); 34 CFR 300.148)	X	Appendix A
	d. Direct Services by the SEA (20 U.S.C. 1413(b); 34 CFR 300.151)		
	e. Implementation Procedures -- SEA (20 U.S.C. 1412(6); 34 CFR 300.136)		
15.	Confidentiality (20 U.S.C. 1412(2)(D); 1417(c); 34 CFR 300.129)	X	58 - 68
16.	Interagency Agreements (20 U.S.C. 1413(a)(13); 20 CFR 300.132)	X	150 - 152
17.	Personnel Standards (20 U.S.C. 1413(a)(14); 34 CFR 300.153)		

4 In the interim draft checklist, which will be distributed on or about 2-15-91, the provisions in Section 14 (Additional Requirements) may be reorganized and expanded to include more detailed references. For example, item 14-d (Direct services by the SEA) will include all of the references listed under §300.151.

PART II

SUBSTANTIVE REQUIREMENTS

B. REPORT OF HOW PART B FUNDS WILL BE USED

I. RIGHT TO EDUCATION

A. Policy

It shall be the policy of the Colorado Department of Education to ensure that all children with disabilities and youth between the ages of 3and 21 in Colorado will have available appropriate education at no cost to their parents or guardians.

B. Procedures

State statute and the provisions contained in the interagency agreements developed between the Colorado Department of Education and other agencies and institutions providing for the education of children with disabilities provide the basis for the implementation of this policy by the Department. Through its monitoring of educational agencies and institutions, the Department insures that the policy is maintained.

The State Board of Education has the duty by statute to exercise general supervision over the public schools of the state and the educational programs maintained and operated by all State governmental agencies for persons who have not completed the twelfth grade level of instruction. The State Board has the power to promulgate and adopt policies, rules, and regulations concerning general supervision of the public schools, the Department, and the educational programs maintained and operated by all state governmental agencies for persons who have not completed the twelfth grade level of instruction.

However, the Individuals with Disabilities Education Act shall not be construed to limit the responsibility of agencies other than educational agencies in a state from providing or paying for some or all of the costs of a free appropriate public education to be provided to children with disabilities in the state.

Colorado school districts provide for a free appropriate public education to all children ages 3 through 21 in need of special education services. For those students who have not received a high school diploma or its equivalent, a free appropriate public education is available until age twenty-one to meet their special educational needs.

The right to education policy is reflected in Colorado's mandated Exceptional Children's Educational Act, C.R.S. 22-20-102 as amended in 1990 (see Appendix A), which specifies school district responsibilities, definitions of handicapping conditions, and ages of children with disabilities for whom school programs must be available.

Interagency administrative agreements have been established to facilitate compliance with Colorado's right to education policy. Each interagency agreement developed by the Colorado Department of Education with the public and private agencies which provide for the education of children with disabilities addresses the right to education policy as described above. All interagency agreements are evaluated at least annually. The implementation of these agreements is also evaluated as a part of the state educational agency on-site process.

Each interagency agreement developed by the Colorado Department of Education with other public and private agencies which provide educational services to children with disabilities contains provisions for accomplishing Colorado's full educational opportunity goal. Data requirements for this section will be met with the submission of Colorado's Annual Data Report.

II. FREE APPROPRIATE PUBLIC EDUCATION

A. Policy

The Department of Education shall ensure that all children and youth with disabilities, 3 through 21, shall be provided a free appropriate public education. For the purposes of this policy, a free appropriate public education shall be defined as special education, instructional, transition and related services which:

1. Are provided at public expense; under public supervision and direction; without charge to the parent, child, or guardian at an approved facility.

2. Meet the standards of the Colorado Department of Education as specified in this State Plan, the Exceptional Children's Educational Act (ECEA) and the Rules of the ECEA.

3. Meet the standards of IDEA and its' rules.

4. Are provided in conformity with an individualized education program.

B. Procedures

The Department shall ensure that the following procedures are followed:

1. Children and youth, between the ages of 3 through 21, in need of an individualized educational program because of a handicapping condition (as defined in the Rules) shall be assured provision of educational services (instructional, transition and related) by the district of residence, as determined by state policy, statute and rules.

2. Two or more districts may contract to provide services to children with disabilities through an administrative unit.

3. Incarcerated youth in need of individualized educational programs because of handicapping conditions shall be provided appropriate educational services by the Division of Youth Services or the Department of Corrections in accordance with the determination of an appropriately constituted staffing/IEP committee. Such educational services shall be provided in accordance with state and federal statutes and regulations. Districts of residence shall be notified of all educational services provided to students deemed to be their responsibility.

4. Children and youth who are in need of an individualized educational program because of a handicapping condition but are also in need of residential care and treatment shall be provided educational services under the supervision of the district of residence. Residential care and treatment are those services defined by the Department of Social Services or the Division for Developmental Disabilities as necessary for the physical or emotional well being of the child and shall be supervised by those agencies.

5. Children and youth, who are in need of an individualized education program because of a handicapping condition, and whose parents reside out of state, cannot be located or who have had parental rights terminated shall be the responsibility of the district in which the child resides.

6. The district of residence of a handicapped child is the school district which such child lives on a day-to-day basis; except that, if a handicapped child is homeless, as defined by section 22-1-102.5, the provisions of section 22-1-102 (2) (h) shall apply, and except that, when a child is living at one of the regional centers including satellite homes of such centers operated by the department of institutions, the Fort Logan mental health center, Colorado state hospital, a group care facility or home, or the school for the deaf and the blind, such child shall be deemed to reside where the parent or guardian

of such child resides; except that, when a child lives in such facility and the district of residence cannot be determined due to the inability to locate a parent or guardian, the child shall be considered a resident of the school district in which such facility is located.

7. In those instances where a handicapped child is placed into an eligible facility by a court or other agency without the written approval of the district of residence:

   a. Written notification of placement shall be provided to the district of residence by the court or other agency.

   b. If the placement is not approved by the district of residence, written notification of disapproval shall be submitted to the court or agency making the placement within fifteen (15) days after receiving written notification of placement. If the district fails to submit this written notice of disapproval, it shall constitute approval of placement by the administrative unit of residence.

   c. When children are placed without prior or subsequent written approval of the district of residence, the IEP shall be the responsibility of the facility providing the educational program.

   d. Any excess costs incurred prior to the approval of placement by the district of residence shall be the responsibility of the court, agency, or parent making the placement.

   e. If the district of residence disapproves of a placement into an eligible facility, the placement shall be subject to appeal as provided for in 1 CCR 201-8, Rule 2220-R-6.00.

III. FULL EDUCATIONAL OPPORTUNITY GOAL

A. Policy

The Colorado Department of Education has the responsibility of supervising and coordinating the provision of full educational opportunity for all children with disabilities and youth as provided in the Exceptional Children's Educational Act and other provisions of Colorado statute.

The Department of Education shall develop and provide training programs and work with administrative units to improve the educational, instructional, transition and related services for children with disabilities. Furthermore, it shall describe the targeted population for which the improvements are designed, the nature of the training and services as well as the expected outcomes of the designed improvements. In addition, the Department of Education shall ensure that each administrative unit develop its own plan for improving educational, instructional, transition and related services for the handicapped.

The Colorado Department of Education shall assist administrative units in the development of a continuum and an array of educational services and placements which will meet the varying needs of children with disabilities by seeking full funding through state and federal resources the excess costs for meeting the requirements of this Plan.. Full educational opportunity shall mean that each handicapped child, birth through 21 has access to the provisions of a free appropriate public Education.

B. Procedures

1. In order to implement the full educational opportunity policy for the next three years, the Department of Education shall have as its major priorities the improvement of the following services and will undertake activities designed to address these priorities:

   a. Vocational/transitional services for all children and youth with disabilities.

      (1) All eligible students will have a written plan for transitioning from school to adult life.

(2) Beginning no later than age 16, and when appropriate age 14, a statement of needed transition services shall be made on the IEP. This statement may address the interagency responsibilities or linkages, or both, before the student leaves the school setting. When an agency other than education fails to provide the agreed upon transition services the education agency shall reconvene the IEP team to entify alternative strategies to meet the transition objectives.

b. Parent/professional partnership.

c. The coordination of general and special education services.

d. Expanding the array of services for all children with disabilities and youth in the least restrictive environment.

e. Educational and related services for preschoolers and infants.

f. Those services which administrative units identify as a priority.

Selected priorities from this list are further developed in the Comprehensive System of Personnel Development and Least Restrictive Environment Section of this Plan.

2. Comprehensive Program Plan

Each administrative unit shall include in its local comprehensive plan:

a. A description of the programs/services identified locally which are to be improved.

b. An estimate of the number of children and youth affected by these improved services.

c. An estimate of the numbers and types of personnel required to provide these improved services.

IV. POLICY ON PRIORITIES

Requirement suspended.

V. LOCATION, EVALUATION AND IDENTIFICATION OF CHILDREN WITH DISABILITIES

A. AWARENESS

1. Policy

The Department of Education shall ensure that each administrative unit informs the general public of the educational rights of all children with disabilities and youth and the availability of specialized educational services.

2. Procedures

Each administrative unit shall include in its local comprehensive plan the manner in which the unit intends to comply with this policy. At a minimum, however, the unit shall:

a. Provide the necessary information to the general public at least once a year.

b. Use one or more of the following means of informing the general public: local newspapers, newsletters to all resident box holders, flyers, posters, television announcements, notices to physicians, churches, and other agencies as deemed appropriate to the community.

c. Include the following information in its awareness efforts:

(1) That all children and youth from birth through age 21, suspected of being handicapped, have a right to formal determination as to whether or not they have a handicapping condition.

(2) That children and youth with disabilities between the ages of 3 through 21, who have not graduated with a diploma, received a GED or otherwise completed high school, have the right to a free, appropriate public education.

(3) That all children and youth with disabilities between the ages of 3 through 21 be provided individualized educational programs appropriate to meet their educational, and related services needs.

(a) A child upon reaching his/her third birthday becomes eligible for services as of that date.

(b) A youth reaching the age of 21 after the commencement of the academic year has the right to complete that current academic year or attend until he/she graduates, whichever comes first. In such a case, the youth is not entitled to extended school year services during the summer following such current academic year.

B. SCREENING

1. Policy

The Department of Education shall ensure that each administrative unit provides, or provides for screening, as a means of locating children/youth with a suspected handicapping condition.

2. Procedures

Each administrative unit shall include in its local comprehensive plan the manner in which the unit intends to comply with this policy. At a minimum, however, the unit:

a. Shall define screening as the rapid process of sifting through the birth through 21 age population in order to identify those children/youth about whom there is a concern.

b. Shall extend screening to the following populations: birth through 2; out-of-school ages 3 through 21; and in-school ages 5 through 21.

c. Shall extend screening to the following functioning areas: physical communicative, social, psychological, and developmental/educational/vocational.

d. Shall coordinate with agencies in the community which may provide assistance in the screening process, e.g. the local Community Centered Board; Department of Health; etc.

e. Shall include screening for vision and hearing impairments in grades K, 1, 2, 3, 5, 7 and 9.

C REFERRAL

1. Policy

The Department of Education shall ensure that each administrative unit establishes and follows a procedure for referring a child for assessment and possible placement for special education services.

2. Procedures

Each administrative unit shall include in its comprehensive plan the manner in which the unit intends to comply with this policy. At a minimum, however, the unit shall:

a. Distinguish between:

(1) A pre-referral conference, the purpose of which is to consider all pertinent information, the unique needs of the child, and to generate alternative strategies in meeting these needs in non-special education settings or to determine the need for a special education referral.

(2) A special education referral which is designed to initiate the special education process (a special education referral must result in an assessment and staffing).

b. Establish a process whereby a pre-referral conference is not required.

D. ASSESSMENT

1. Policy

The Department of Education shall ensure that each administrative unit establish procedures for the assessment of children/youth suspected of being handicapped as stated in Section IX.

2. Procedures

Each administrative unit shall include in its local comprehensive plan the manner in which the unit intends to comply with this policy. At a minimum, however, the unit shall:

a. Define assessment as a systematic process of collecting and carefully interpreting information about a child's or youth's current level of functioning.

b. Assure that each youth is assessed and staffed within 60 school days of the special education referral.

c. Obtain the parent's written permission before the initial assessment procedure for special education purposes.

d. Include in the assessment an examination of all of the functioning areas for each child/youth referred. Those areas are physical, communicative, social, psychological, and developmental/educational/vocational.

e. Use assessment information for the purpose of identifying the existence of a handicapping condition and for planning to meet the educational, vocational and life skills functioning needs of the handicapped child/youth so that all special educational, instructional, transition and related services needs are met.

f. Assure that the assessment is multidisciplinary and also multifaceted.

g. Provide for an assessment of sufficient scope and intensity in all functioning areas.

h. Allow both for informal as well as formal measures of assessment.

E. STAFFING/DEVELOPMENT OF THE IEP

1. Policy

The Department of Education shall ensure that each administrative unit establish and follow procedures for determining whether or not a child/youth is handicapped for the purposes of recommending appropriate services and for developing the individualized educational plan (IEP).

2. Procedures

Each administrative unit shall include in its local comprehensive plan the manner in which the unit intends to comply with this policy, and the manner by which it will insure that the parents understand the proceedings at a meeting. At a minimum, however, the unit shall:

a. Require that the composition of the staffing/IEP committee adhere to the Colorado Rules for the Administration of the Exceptional Children's Educational Act, and Federal Regulations.

b. Require that the staffing/IEP committee reach its decisions by consensus.

c. Recognize that committee members, including the parents, may communicate with each other regarding the assessment of the child prior to the staffing. Committee members shall communicate in this matter solely for the purpose of acquiring sufficient knowledge with which to make a well-informed decision at the staffing in the best interest of the child.

d. Notify parents and other required participants in writing and in a timely manner of the staffing. Such notification also shall inform the parents of their right to be represented at the staffing by counsel or the representative of their choice. **(Refer to Section VI Procedural Safeguards of this Plan for additional information.)**

e. Include representatives at the staffing from other agencies when the assessment indicates that consideration may be given to recommending placement of a child in one of those agencies.

f. Adhere to the following functions of the staffing/IEP committee as described in the Rules for the Administration of the Exceptional Children's Educational Act and in Federal Regulations.

(1) Assure that a comprehensive assessment of sufficient scope and intensity has been completed.

(2) Determine the present levels of functioning, including the present levels of education performance.

(3) Determine the educational, instructional, transitional and related services needs, of the child/youth.

(4) Determine whether the child/youth is unable to receive reasonable benefits from regular education due to the handicapping condition.

(5) Prioritize and cluster identified needs into annual goals.

(6) Identify the characteristics of services which will meet the child's identified needs/goals.

(7) Recommend placement in the least restrictive environment.

(8) Develop:

(a) Short-term instructional objectives based on the established annual goals.

(b) Evaluation criteria.

(9) Keep accurate records of all proceedings.

(10) Identify the specific special education, instructional, transitional and related services to be provided to the child and the extent to which the child will be able to participate in regular educational program. (Refer to LRE section of this Plan).

(11) Establish the dates for initiation of services and the anticipated duration of the services.

(12) Identify the objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(13) The staffing team shall consider all possible alternative placements where the services may be provided. The staffing team shall recommend placement in the least restrictive environment which most accurately reflects the needs of the student and gives appropriate consideration to the desires of the parents/guardian.

g. If the parents are unable to attend the staffing/IEP conference, the administrative unit shall use other methods such as conference telephone calls to ensure parent participation.

h. Maintain documentation of the administrative unit's attempts to arrange the staffing at a mutually convenient time and place and send to the parents a copy of the staffing/IEP should the parents elect not to attend and participate in the staffing/IEP conference. A copy of a student's IEP shall be provided to the parents upon request.

i. Determine on an individual basis the child's eligibility for extended school year services.

j. Assure that the IEP is in effect before educational and related services begin.

k. Assure implementation as soon as possible.

Review Staffing Committee. Determination of the adequacy of the program or the need for some other placement shall be made by an appropriate staffing committee. If a child has been placed in a community centered board program, the review staffing committee shall include representatives of the program. If the child has been placed in an institutional program, arrangements shall be made for consultation between institutional staff and the administrative unit.

a. When a change of determination of handicapping condition is not indicated, the annual review may be conducted by the original staffing committee or by a committee consisting of:

   (1) The director of special education, or his/her designee.

   (2) A school administrator, or his/her designee.

   (3) Regular and special educators and/or support staff who have been assigned specific responsibilities for the child's special education program.

(4) Other appropriate personnel who may have additional knowledge about the student.

(5) Parent and, when appropriate, the student.

b. When a change of determination of handicapping condition is indicated, the committee shall be of the same professional discipline composition as the original staffing committee specified in 1 CCR 301.8-R-2220 Rule 3.04(1).

VI. PROCEDURAL SAFEGUARDS

A. Policy

The procedural safeguards afforded to students and parents involved in the special education process by the State of Colorado shall be in compliance with all relevant federal and state statutes and regulations. In order to insure that all appropriate parties have an opportunity to be involved in the educational decision-making process regarding special education participation, the State of Colorado shall assure that parents receive prior written notice when an administrative unit:

1. Proposes to initiate or change the identification, evaluation or educational program of the child or the provision of a free appropriate public education to the child.

2. Refuses to initiate or change the identification, evaluation, or educational program of a child or the provision of a free appropriate public education to a child.

The State of Colorado assures each administrative unit shall obtain written parental consent prior to:

1. Conducting a preplacement evaluation

2. The initial placement of a handicapped child in an individualized program of special education and related services in accordance with this policy. Except for preplacement evaluation and initial placement, consent may not be required as a condition of benefit to the parent or child.

The State of Colorado assures that each special education administrative unit and other public agencies shall adopt and implement procedures which protect the rights of children and youth with disabilities. Distribution of this Plan, Colorado Rules and other relevant documents to all administrative units and other agencies providing services to children with disabilities will be made.

B. Procedures

The Colorado Department of Education has established and adopted the following procedural safeguards for Colorado's handicapped students consistent with state and federal law.

In order to ensure that parents of children with disabilities or children with disabilities themselves have an opportunity to participate in the educational decision-making process, the following safeguards shall be provided by the local administrative unit.

1. Written prior notice must be given to the parents of a handicapped child each time an action is proposed or a request is refused in accordance with the above policy, Section VI., A., above.

    a. The written notice must include:

        (1) A full explanation of all the procedural safeguards available to the parents as specified in this Plan.

        (2) A description of the action proposed or refused by the administrative unit, an explanation of why the administrative unit proposes or refuses to take the action, and a description of any options the administrative unit considered and the reasons why those options were rejected.

        (3) A description of each evaluation procedure, test, record, or report the administrative unit used as a basis for the proposal or refusal.

        (4) A description of any other factors which are relevant to the administrative unit's proposal or refusal.

    b. The notice must be:

        (1) Written in language understandable to the general public and:

(2) Provided in the language normally used by the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the parent's language or other mode of communication is not a written language, the local education agency shall take steps to insure:

(a) That the notice is translated orally or by other means to the parent in his or her language or mode of communication.

(b) That the parent understands the content of the notice.

(c) That there is documented written evidence that the requirements in (i) and (ii) above have been met.

(3) Provided in a timely manner to insure that the parents have an opportunity to agree or object to the action proposed or refused.

2. Written notice prior to assessment must include:

a. The reasons for the assessment; and

b. A statement regarding the opportunity for a face-to-face conference with school personnel about the process of assessment.

c. A description of each evaluation procedure, test, record, or report the administrative unit will use as a basis for the proposal or refusal.

d. A statement that written parental consent is required for preplacement assessment.

3. Information about obtaining an independent evaluation, which means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question, and parents shall be informed of the following:

a. Upon request, information about where an independent educational evaluation may be obtained.

b. That parents have the right to an independent educational evaluation at public expense if they disagree with the results of an evaluation obtained by the public agency. However, the public agency may initiate an impartial due process hearing to show that its evaluation is appropriate. If the final decision of the hearing officer is that the administrative unit evaluation is appropriate, the parent has the right to an independent evaluation, but not at public expense. Public expense means that the agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.

c. That should the parent seek an independent evaluation at private expense, and choose to have that evaluation used for the purpose of making educational decisions, the parent shall submit copies of records made therein to the director of special education which shall be considered by the staffing committee in evaluating or re-evaluating the child for placement in special education; and such evaluation may be presented at an impartial due process hearing as evidence.

d. That an independent evaluation provided at public expense must meet the same criteria as that used by the public agency when it initiates an evaluation.

e. As part of a due process hearing the hearing officer may request an comprehensive educational evaluation. If requested, this evaluation must be at public expense.

4. Information required prior to placement in special education shall include:

a. A written notice that placement of a child in a special education program or service and assignment of specific staff to meet the child's identified needs shall be made by the special education director, or designee, who shall:

(1) Place the handicapped child in the least restrictive environment in which a Free Appropriate Public Education can be delivered to the child (see LRE section of this Plan).

(2) Insure that such placement is consistent with the child's needs as described in the IEP.

(3) Include the considerations of the desire of the parents.

(4) Insure that the special education program is at no expense to the parents.

b. That prior to the initial placement of a child in a special education program written parental consent must be obtained.

(1) A representative of the staffing committee shall consult with the parents and provide written notice regarding:

(a) educational needs, and recommendation for service delivery.

(b) available alternatives.

(c) access to all school records including records of identification, evaluation and placement as well as those regarding a free appropriate public education that pertains to their child pursuant to law.

(d) procedures for regular review.

(e) appeal procedures.

5. Review staffings:

A child who has been determined to be handicapped and placed in a special education program shall continue to participate in such program as long as he/she needs special education to receive educational benefit. A review of each student'S IEP placed in a public school special education program, a community centered board program, or an institutional program shall be made at least annually following placement, or more frequently when information suggests a need.

6. Written prior notice regarding review staffings must be given in a timely manner so as to give the parent an opportunity to attend and participate and must include:

   a. The procedures for conducting special, annual, triennial, and termination staffings.

   b. The time, place, and purpose of the meeting.

   c. The opportunity to reschedule the meeting if the time and place set forth is not mutually convenient.

   d. The opportunity to examine records in accordance with Section VIII of this Plan.

7. The general requirements for parental consent:

   Administrative units are required to have dated, written parental consent prior to the initiation of formal preplacement evaluation procedures. Parental consent is not required for subsequent reassessment.

   Additional safeguards are provided by requiring administrative units to have parental consent dated prior to the use of such information for purposes other than those previously specified by parents in accordance with the requirements of the Family Educational Rights and Privacy Act and the Colorado Public Records Act Sections 24-72-201 et.seq. CRS. For the purposes of this Plan, consent shall mean:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her language, or other mode of communication.

b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom.

c. The parent understands that the granting of consent is voluntary on his or her part and may be revoked by him or her at any time.

d. If the parent refuses to give permission for the assessment or fails to respond after reasonable efforts by the administrative unit, and the local school board believes that the child may be significantly harmed by the absence of special education services, the local school board may elect to have the Department of Social Services institute court dependency proceedings to obtain authorization for assessment of the child.

e. If the child's parent/guardian is unknown or unavailable, the school shall appoint an educational surrogate parent for the purposes of consenting or refusing to consent to assessment and staffing, or objecting to placement of the child in the special education program, as well as protecting the child's interest.

C Monitoring

The local comprehensive plan for each administrative unit and other public agencies shall be evaluated by the Department to insure that policies regarding procedural safeguards are in place and that there are procedures to implement these policies. Onsite teams will interview parents and agency staff to insure that these policies and procedures are implemented. Count audit teams will review records to determine if these policies and procedures are being implemented.

Failure to develop policies and procedures which meet federal and state requirements or failure to implement such policies and procedures shall cause an administrative unit to be in noncompliance and in jeopardy of losing federal and state funds.

VII. IMPARTIAL DUE PROCESS HEARING

A. Policy

It shall be the policy of the Colorado Department of Education that each special education administrative unit shall adopt and implement procedures which comply with the provisions of this Plan for conducting due process hearings when there is disagreement regarding any of the following matters:

1. A proposal to initiate or change the identification, evaluation or educational program of the child or the provision of a free appropriate public education to the child.

2. A refusal to initiate or change the identification, evaluation, or educational program of the child or the provision of a free appropriate public education to the child.

3. The failure to obtain written parental consent prior to:

   a. Conducting an initial preplacement evaluation.

   b. Providing a handicapped child with initial special education and related services.

4. A disagreement regarding the availability of a program appropriate for the child and when there is a question of financial responsibility following a parent's unilateral placement of a child in a private school or facility..

B. Procedures

A parent, administrative unit, or a district that is a member of an administrative unit may request a due process hearing on any matter set forth in the above policy. Not later than 45 days after receipt of a request for a hearing a final decision must be reached and a copy of that decision mailed to the parties to the hearing unless the timeline is appropriately extended. Hearings must be conducted at a time and place which is reasonably convenient to the parents.

1. Request for hearing by parent.

   a. Hearings conducted pursuant to this Plan shall be initiated by a parent submitting a written request to the director of special education of an administrative unit or district that is a member of an administrative unit.

   b. Within 10 calendar days or the first business day after the tenth day the hearing officer shall be designated according to the following procedures:

      (1) The district shall notify the special education director or designee of the administrative unit.

      (2) The district or administrative unit shall telephone The Colorado Department of Education with a request for available hearing officers and confirm the request in writing accompanied by a copy of the request for the due process hearing.

      (3) The Colorado Department of Education shall provide by telephone to each party within four calendar days the names of three available hearing officers and will confirm the names in writing accompanied by biographical information about the available hearing officers.

      (4) The parent shall notify the district or administrative unit of the name of the individual that the parent eliminates from the list of three. This action shall occur so as to allow the district or administrative unit at least two days out of the total of ten days during which to strike one of the remaining two names and to select the hearing officer.

      (5) The district or administrative unit shall notify the parent and the Colorado Department of Education as to whom was selected. The Colorado Department of Education will notify the hearing officer of his or her selection If such notification is by telephone it must be confirmed in writing.

c. If either the district, administrative unit or parent fails to eliminate a name from the hearing officer list in a timely manner the other party will notify the Colorado Department of Education which will determine if there is unwarranted delay. The colorado Department of Education will then allow the party not responsible for the delay to select the hearing officer. If such notification is by telephone it must be confirmed in writing.

d. Upon receipt of a parent's request for a hearing the district or administrative unit shall identify, in writing, for the parent any free or low cost legal or Other relevant services available. This information shall be available at any time upon parent request.

2. Request for a hearing by an administrative unit or district that is a member of an administrative unit.

a. Hearings conducted pursuant to this section shall be initiated by an administrative unit or district submitting a written request to the Colorado Department of Education, Special Education Services Unit and the parent (and the administrative unit if a member district is making the request). The 45 day timeline commences upon receipt of the request by the Colorado Department of Education.

b. Within 10 calendar days or the first business day after the tenth day the hearing officer shall be designated according to the following procedures:

(1) The Colorado Department of Education shall provide by telephone to each party within four calendar days the names of three available hearing officers and will confirm the names in writing accompanied by biographical information about the available hearing officers.

(2) The requesting party shall notify the parent of the name of the individual that it eliminates from the list of three. This action shall occur so as to allow the parent at least two days out of the total of ten days during which to strike one of the remaining two names and to select the hearing officer.

(3) The parent shall notify the district or administrative unit of the name that the parent eliminates.

(4) The district or administrative unit shall notify the Colorado Department of Education and the Colorado Department of Education will notify the hearing officer of his or her selection.. If such notification is by telephone it must be confirmed in writing.

c. If either the district, administrative unit or parent fails to eliminate a name from the hearing officer list in a timely manner the other party will notify the Colorado Department of Education which will determine if there is unwarranted delay. The colorado Department of Education will then allow the party not responsible for the delay to select the hearing officer. If such notification is by telephone it must be confirmed in writing.

d. If the district or administrative unit is requesting a hearing it shall include in the notice of request sent to the parent information about any free or low cost legal or relevant services available.

3. Request for a hearing by a student with disabilities.

a. A student with disabilities or suspected of having a disability, who is eighteen (18) years of age, and has not been declared incompetent may request a hearing. In such instances the procedures described in section 1., above, shall apply.

4. Due process hearing.

a. The hearing officer shall:

(1) Set forth the procedures and timelines to be followed during the hearing.

(2) Schedule the time and place for the hearing.

(3) Schedule a prehearing conference at which the issues will be identified and the specific requests of the parties determined.

(4) At the request of either party secure subpoenas from the Department of Administration, Division of Administrative Hearings, Administrative Law Judges to compel attendance of witnesses at the hearing.

(5) Ensure that a written or electronic verbatim account of the hearing is kept.

(6) Notify the Colorado Department of Education, in writing, of any disposition of a request for a hearing prior to the issuance of a decision.

b. The hearing officer may:

(1) At the request of either party, grant specific extensions of time beyond the 45 day timeline in which to reach a final decision and mail a copy of the decision to the parties.

c. Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge and training with respect to problems of children with disabilities.

(2) Present evidence and confront and cross-examine witnesses.

(3) Request the hearing officer to secure subpoenas pursuant to Section VII B. 4 a. (4) above to compel the attendance of witnesses.

(4) Prohibit the introduction of any evidence, either through witnesses or documents, at the hearing if the witness has not been identified or the document has not been disclosed at least five days before the hearing.

(5) Obtain a written or electronic verbatim record of the hearing from the hearing officer. The party who wishes a transcription of the record shall be responsible for its cost. A transcription of the record obtained by one party shall be available to the other party at reasonable times for inspection and study. A party wishing a copy of a transcription is responsible for the costs of obtaining the copy from the individual who transcribed the record.

(6) Obtain a copy of the written findings of fact and decision.

d. Parent(s) have the right to:

(1) Have the child who is the subject of the hearing present.

(2) Open the hearing to the public upon request.

(3) Review and receive copies, at their own expense, of all educational records concerning the child at any time prior to the hearing.

e. Decision of the hearing officer:

(1) The hearing officer shall render, in writing, all findings of fact and the decision based upon the evidence. The hearing officer shall mail it by certified mail to both parties and the Colorado Department of Education within forty-five (45) days after receipt of the request for hearing or within the timeline established pursuant to section 4 (b).

(2) Along with the decision mailed to both parties, the hearing officer shall include a copy of the portion of the State Plan regarding state level review.

(3) The decision shall be written so that it does not contain the name of the student or parent(s) other than as contained in a cover page.

(4) The record of the hearing shall include all findings of fact, the decision, and tape recording of the hearing, if available,The record shall be forwarded to the Colorado Department of Education 45 days after the conclusion of the proceedings if no appeal has been made.

(5) The grounds of the decision shall be within the scope of the issues presented on the record.

(6) The Colorado Department of Education shall transmit the hearing officer's findings and decision to the State Advisory Committee and other Colorado Department of Education-trained hearing officers.

(7) If there is no appeal, the decision of the hearing officer is final and binding upon the parties.

5. Registry of due process hearing officers:

a. The Colorado Department of Education, Special Education Services Unit, shall keep a list of persons trained by the Colorado Department of Education who may serve as due process hearing officers. The list must include a statement of the qualifications of each of these persons. Parties to a hearing shall select hearing officers from this list. A person who otherwise qualifies as a hearing officer is not an employee of a public agency solely because that hearing officer is paid by this agency to conduct a hearing.

6. Individuals described by the following criteria shall not be eligible as hearing officers:

a. Officers and employees of the State Board of Education.

b. Officers and employees of school districts and administrative units.

c. Any person having a personal or professional interest which would conflict with his or her objectivity in a hearing.

d. Parents of handicapped children from birth to 21.

7. Right to appeal decision of impartial hearing officer.

a. Either party may obtain state level review of the decision of the impartial hearing officer. The state level review shall be conducted by an Administrative Law Judge of the Colorado Department of Administration, Division of Administrative Hearings.

8. Procedure for appealing decision of impartial hearing officer.

a. Any party who seeks to appeal the decision of an impartial hearing officer shall file with or mail to the Division of Administrative Hearings within 30 days after receipt of the impartial hearing officer's decision:

(1) A notice of appeal; and

(2) A designation of the transcript. A party may designate a portion of the tape recorded record or arrange for a transcript of the tape recorded record.

b. Simultaneous with mailing or filing the notice of appeal and designation of transcript with the Division of Administrative Hearings, the appealing party shall mail copies of these documents to the Colorado Department of Education and to all other parties in the proceeding before the impartial hearing officer at their last known addresses.

Within five days of receipt of a notice of appeal, any other party may file a cross-appeal.

c. The notice of appeal shall contain the following:

(1) The caption of the case, including case number and names of all parties.

(2) The party or parties initiating the appeal.

(3) A brief description of the nature of the case and the order being appealed.

(4) A list of the issues to be raised on appeal.

(5) A copy of the findings of fact and decision of the impartial hearing officer being appealed.

(6) A certificate of service showing the date the copy of the notice of appeal was mailed to the Colorado Department of Education and to all parties in the proceeding before the impartial hearing officer. All subsequent documents and pleadings filed with the Division of Administrative Hearings shall similarly contain a certificate of service showing that a copy was mailed to all parties.

d. A notice of cross-appeal shall contain those items listed in VII., B, 8, c, (1) - (4) above along with a certificate of service.

e. At the time the notice of appeal is filed or mailed, the appealing party shall also file with or mail to the Division of Administrative Hearings either a statement that no transcript is necessary for the appeal and a review of the tape recorded record is sufficient or a designation of all portions of the transcript necessary for resolution of the appeal. No transcript is required if the issues on appeal are limited to pure questions of law.

f. Within five days after the receipt of the notice of appeal and designation of transcript or tape recording, the other party may file with the Division of Administrative hearings a designation of any additional portions of the transcript which that party believes are necessary for resolution of the appeal.

g. Whichever party appeals the decision shall insure that such transcript is filed with the Division of Administrative Hearings within 15 days of the date the notice of appeal is mailed or filed.

(1) Whichever party appeals the decision shall, simultaneously with filing or mailing the notice of appeal and designation of record, contact the court reporter and order the transcript or arrange for the transcription of a tape recorded record or submit the entire tape recorded record..

(2) Immediately upon filing any additional designations pursuant to Section VII., B., 8., F. any party submitting designations shall order from the court reporter the transcript or arrange for transcription in the case of a tape recorded record and shall insure that such transcript is filed with the Division of Administrative Hearings within 15 days, or submit the entire tape recording.

(3) A party requesting a written transcript is responsible for paying for it. A party requesting parts of a written transcript by filing an additional designation is responsible to pay for those portions of the transcript. Parents shall not be required to pay for the cost of a copy of the tape recorded record for an appeal. The transcript or portions thereof shall be made available to any party at reasonable times for inspection or copying at the copiers expense.

g.. Upon receipt of the notice of appeal, the Administrative Law Judge assigned to hear the appeal shall direct the impartial hearing officer to certify and transmit to the Administrative Law Judge, within seven days, all pleadings and documents filed with the impartial hearing officer, all exhibits, and the decision of the impartial hearing officer.

9. State level review procedures.

a. Unless otherwise ordered by the Administrative Law Judge, briefs shall be filed and oral argument held within 20 days after the filing or mailing of the notice of appeal.

b. In conducting a state level review the Administrative Law Judge shall:

(1) Examine the transcript and certified record received from the impartial hearing officer.

(2) Seek or accept additional evidence, if needed.

(3) Afford the parties an opportunity for oral or written argument, or both if appropriate, at a time and place reasonably convenient to the parties.

(4) Determine and assure that the procedure at the hearing before the impartial hearing officer was in accordance with the requirements of due process.

(5) Make a final and independent decision and mail such to all parties within 30 days of the filing or mailing of the notice of appeal.

c. The Administrative Law Judge may grant specific extensions of any of the timelines once a timely appeal has been received at the request of either party.

d. In connection with the state level review, the parties shall have the following rights:

(1) To be accompanied and advised by counsel and by individuals with special knowledge with respect to the problems of children with disabilities.

(2) If further evidence is to be taken, to present evidence and confront, cross-examine, and compel the attendance of witnesses.

(3) To prohibit the introduction of any evidence through witnesses or documents at the hearing if the witness has not been identified or the document has not been disclosed to that party at least five days before the hearing.

(4) To obtain a written or electronic verbatim record of the hearing.

(5) To obtain a written determination upon state level review, including written findings of fact and a decision.

e. In connection with any hearing that is part of the state level review, parents shall have the following additional rights:

(1) To have the child who is the subject of the hearing present.

(2) To open the hearing to the public.

10. Appeal of decision on state level review.

a. A decision made upon a state level review shall be final except that any party has the right to bring a civil action in an appropriate court of law, either federal or state.

11. Attorneys' Fees

a. In any administrative proceeding brought under 20. U.S.C. § 1401, et. seq., or C.R.S. § 22-20-101, et. seq., the impartial hearing officer or the administrative law judge, may not award reasonable attorneys' fees as part of the cost to the parents or guardian of a handicapped child or

youth who is the prevailing party. Attorneys' fees shall be sought in the district court and the determination shall be made in accordance with applicable law..

12. Interim enrollment.

a. Unless otherwise agreed upon by the administrative unit and the parents, the child will remain in his or her present placement until completion of the proceedings.

b. If the hearing involves initial admission to the public school, the child will be placed in a public program with the consent of the parents/guardian, until completion of the proceedings.

13. Other available means of dispute resolution

a. Parents and districts have the right to request a due process hearing in accordance with procedures set out above. However, there is available a number of other methods of dispute resolution of which the parties may avail themselves. The use of any of these processes does not interfere with the right to obtain a timely decision in the due process proceeding.

(1) Mediation

The Colorado Department of Education has established a mediation process as an optional method of resolution for special education disputes.

(a) Participation in mediation is strictly voluntary and does not preclude or delay a party's right to request a due process hearing. If a hearing has already been requested, mediation does not Affect a party's right to a hearing and decision within the specified timelines.

(b) A trained mediator is chosen by the parties to guide them toward a mutually satisfactory solution in the best interests of the student.

(c) The Colorado Department of Education will maintain a list of all trained mediators currently available and interested in mediating special education disputes.

(d) When both the parent and the district or administrative unit have agreed to participate in mediation, either party may contact the Colorado Department of Education to obtain names, addresses, and telephone numbers of three mediators and additional information about the mediation process.

(e) A mediation session is confidential.

(f) A successful mediation may result in a written record of the agreement voluntarily signed by all parties at the conclusion of the mediation session.

(2) Complaint procedure

The Colorado Department of Education, as required by the General Education Provisions Act, 20 U.S.C. 1221e et seq. and the Federal Education Department General Administrative Regulations, 34 C.F.R. 76.780 et seq., has established a written procedure

For receiving and resolving any complaints that the state or grantee is violating a federal statute or regulation applying to a federally funded program administered by the Colorado Department of Education. This includes programs to which this State Plan applies.

(a) The intent of the complaint procedure is to address any compliance issue raised by state, administrative unit, or school district policy, procedure, and practice.

(b) Complaints may be filed by an organization or individual by an action of a district, administrative unit or the state.

(c) A complaint must be written and signed and specifically state the basis for the complaint.

(d) The complaint must be filed with the Colorado Department of Education and will be investigated and resolved in accordance with the terms of Colorado State Board of Education Policy Concerning Complaint Procedures.

(3) Informal negotiation

To provide opportunities for reconciling differences by discussion with the decision makers of the local education agency (local directors of special education, the chief executive officer of the school district having jurisdiction, or the agency head or designee in the case of other state agency programs); a negotiation process is provided in this State Plan.

This negotiation process, however, shall not be utilized in such a manner that the timelines of the hearing are impeded. Should either party request an opportunity to be heard by an impartial hearing officer, the request must be granted and the hearing completed within forty-five (45) days, unless the timelines are extended pursuant to Section VII., B, 4, B above.

It is suggested that if at all possible, negotiations continue right up until the time of a hearing in order to reconcile whatever differences may exist.

Regardless of whether an impartial hearing has been requested or not, when there are differences between the parties, it is recommended that a negotiations process be entered into which may lead to reconciliation.

(a) Conference with special education director

If the parents disagree with the recommendations of the staffing, review and/or termination committee, an opportunity for a conference with the director of special education, or his/her designee, may be afforded. This conference shall be scheduled and conducted as follows:

i. A request for a conference shall be submitted in writing to the office of the director of special education within ten (10 school days after notification of the staffing committee's recommendations.

ii. Upon receipt of the request for a conference, the unit shall notify the parents within five (5) school days, by mail, of the date and place of the conference, which shall be held at a mutually convenient time and place not more than ten (10) days after receipt of the request.

iii. The participants at the conference should include an appropriate administrator of the child's district of attendance, one or more representatives of the staffing committee, (as determined by the director of special education), t the parents of the child, any party who accompanied the parent to the staffing in question, and the child, when appropriate.

(b) Further levels of informal negotiation may be established by the district, at its option.

VIII. CONFIDENTIALITY

A. Policy

The Colorado Department of Education has the responsibility to insure that of the confidentiality of personally identifiable information collected, used, or maintained by district or administrative units is protected consistent with state and federal regulations.

B. Procedures

The following procedures have been established by the Colorado Department of Education to protect the confidentiality of personally identifiable information required under 34 CFR 300.560-300a.~~574~~ 576.

1. Notice: Method and Content

In keeping with the policies and procedures presented in Section V; Location, Evaluation and Identification of Handicapped Children of this Plan, the Colorado Department of Education and all administrative units participating in these activities shall give notice through the public media in English and other languages which may be prevalent to inform parents about the policies and procedures which are currently in effect relating to confidentiality. The following notice will be used by the Colorado Department of Education and may be modified for use by Colorado's administrative units. Participating agencies meaning any agency or institution when collecting, maintaining or using personally identifiable information or from which information is obtained, for educational purposes are subject to these procedures.

Confidentiality of Child Identification Data. Sections 24-72-201 et. seq., C.R.S guarantees the confidentiality of child identification data, and the Colorado State Board of Education has adopted procedures and published notices of local board responsibilities under federal law for insuring the confidentiality of child identification data maintained by the public schools of Colorado on individual children for educational purposes. The procedures adopted are designed to insure that the rights of parents and children, relative to the permanent school records of children, are protected.

Information concerning special education which could identify an individual child will not be permanently maintained beyond the local level. When collected for count or audit purposes, it will not be held by the Colorado Department of Education.

Parents maintain the right to inspect any and all data which is subject to collection and to appeal the accuracy of any such information.

The access of unauthorized persons to personally identifiable data without consent of the parent or guardian is forbidden by federal and state statutes. One person in each administrative unit shall be designated as the custodian for controlling access to special education records and information concerning special education. The custodian of records shall direct the activities of special education records coordinator(s).

2. Designation of Special Education Records Coordinator

   a. Administrative Unit Requirement

      Each administrative unit shall designate one or more employees to serve as a Special Education Records Coordinator who shall be familiar with state and federal confidentiality requirements.

b. Responsibilities

Each Special Education Records Coordinator shall assume responsibility for insuring the confidentiality of any personally identifiable information which includes: (a) The name of the child, the child's parent, or other family member; (b) The address of the child; (c) A personal identifier, sych as the child's social security number or student number, or (d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty and shall:

(1) Respond to any request for inspection and review of an education record, including a request for a copy of an educational record.

(2) Respond to any request made for an explanation or interpretation of an educational record.

(3) Respond to any request to disclose or release personally identifiable information.

(4) Respond to any request made to destroy an educational record.

(5) Keep a record of parties obtaining access to educational records (except access by parents and authorized employees), including the name of the party, the date access took place, and the purpose of the authorized use.

(6) Maintain, for public inspection, a current listing of the names and positions of the employees who may have access to personally identifiable information.

(7) Provide parents on request, a list of the types and locations of educational records collected, maintained, or used by the school system.

(8) Ensure that the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages is protected.

(9) Provide training and instruction to all persons collecting or using confidential information.

3. Access Rights

a. Parents Rights to Review Records

Each educational agency or institution shall presume that the parent or guardian has authority to inspect and review information relating to his or her child unless the agency has been advised in writing that the parent or guardian does not have the authority under applicable state law governing such matters as guardianship, separation or divorce.

Each educational agency or institution shall:

(1) Permit parents, guardians, or their authorized designees to inspect and review any educational records relating to their child which are collected, maintained, or used by the administrative unit.

The agency shall comply with a request without unnecessary delay and before any meeting regarding an individual educational program, or hearing related to the identification, re-evaluation, or placement of the child, and in no case more than three (3) working days after the request has been made, as required in Section 24-72-203(3) C.R.S. Access of parents or guardians to information regarding their child, as required in the Family Educational Rights and Privacy Act 20 USC 1232g and its implementing regulation 34 CFR 99, shall be assured.

(2) When providing review of confidential records of a handicapped child to the parents, guardians or their designees in compliance with the law, provide appropriate staff members to assist in the interpretation and explanation of the information contained in the records upon request.

(3) Provide copies of the records containing the information upon request of the parents, guardians, or their designee if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records.

b. Record of Access

The agency will keep a record of parties obtaining access to information collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party was authorized to use the information.

c. Record on More Than One Child

If any record includes information on more than one child, the educational agency or institution shall provide the parents of those children the opportunity to inspect and review only the information relating to their child or to be informed of that specific information.

d. Types and Location of Information

The educational agency or institution shall provide parents or guardians, on request, a list of the types and location of information collected, maintained or used by the administrative unit.

e. Fees for Records

The agency may charge a reasonable fee for copies of records which are made for parents, provided that the fee does not effectively prevent the parents from exercising their right to inspect and review their child's records. The agency shall not charge a fee to search for or to retrieve requested information.

f. Amendment of Records at Parent's Request

The educational agency or institution shall permit a parent who believes that information collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child, to request the agency to amend the information.

(1) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time.

(2) If the administrative unit refuses to amend its information in accordance with the request, it shall inform the parents of the refusal, and advise the parents of the right to a hearing.

4. Hearing Rights

a. Opportunity for a Hearing

Each educational agency or institution shall, on request, provide an opportunity for a hearing to parents who believe that data collected or maintained by the agency is inaccurate or misleading, or violates the privacy or other rights of the child.

b. Hearing Procedures

The hearing shall be conducted according to the following procedures:

(1) The hearing shall be held and the decision reached within forty five (45) days after the educational agency or institution has received the request for a hearing, and the parent/guardian of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing.

(2) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(3) The parent of the student or the student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.

(4) The educational agency or institution shall make its decision in writing within statutory timelines.

(5) The decision of the administrative unit shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision. (20 U.S.C. 1232g(a)(2))

c. Result of Hearing

Each educational agency or institution shall, as a result of the hearing, reach a decision relative to amending the child's records on or before forty-five (45) days after such an amendment is requested by the child's parents or guardian.

(1) If the outcome of the hearing is a decision to reject the amendment, the administrative unit shall inform the child's parents, guardian, or eligible student in writing, of the right to place in the records a statement disagreeing with the information contained in the child's records.

(2) Any such statement will be maintained by the administrative unit as part of the child's records as long as the contested portion remains in the records.

(3) If the records of the child, including the contested portion, are disclosed by the administrative unit to any party, the explanation will also be disclosed to the party.

(4) If the outcome of the hearing is to accept the amendment, the educational agency shall inform the parent, guardian or eligible student in writing.

5. Consent

a. Prior Consent for Disclosure Required

Administrative units and educational institutions in Colorado shall obtain the written consent of a student's parent/guardian, or the eligible student before allowing the disclosure of any personally identifiable information from that student's educational records except as provided in 4, b below.

The administrative units and educational institutions may presume that the parent/guardian or eligible student giving consent is authorized to give consent, unless there is evidence of a legally binding instrument preventing the parent or student from giving consent.

b. Prior Consent for Disclosure Not Required

The administrative units and educational institutions may disclose personally identifiable information from a student's educational records without the written consent of a student's parents or eligible student when the disclosure is to:

(1) Other school officials, including teachers within the educational institution or administrative unit who have been determined by such administrative unit or institution to have legitimate educational interests.

(2) Officials of other schools or school systems in which the student seeks to attend or intends to enroll, upon condition that the student's parents, guardian, or eligible student, be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Education, and administrative unit head of an educational agency, or state educational authorities, under the conditions set forth in the relevant federal law.

(4) State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State Statute adopted prior to November 10, 1973.

(5) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive group tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations, and such information will be destroyed when no longer needed for the purpose for which it was conducted.

The Special Education Records Coordinator shall obtain written parental consent before permitting personally identifiable information to be used for any purpose other than meeting a requirement under this Plan.

The Special Education Records Coordinator shall obtain written parental consent before permitting personally identifiable information to be disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in this Plan and only where the disclosure is consistent with all applicable federal and state statutes. Should the parent refuse to consent the local school board may elect to use whatever legal means available to obtain consent. These may include mediation, seeking assistance from social services or the courts, or whatever is available in local school board policy.

c. Access to Data

No educational agency or institution shall maintain a policy or practice of releasing, or providing access to, any personally identifiable information in educational records unless:

(1) There is written consent from the student's parent or guardian specifying records to be released, the reason for such release, and to whom, with a copy of the records to be released to the student's parent, guardian, or designee and the student if desired by the parent or guardian.

(2) Such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Unless such access is permissible as provided in 5b above.

6. Safeguards

Nothing contained in this section shall preclude authorized representatives of the Comptroller General of the United States, the Secretary, an administrative head of an educational agency, or the state educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of the federal legal requirements which related to such programs.

An agency or institution which maintains a file of student educational records shall have adequately trained personnel assigned with the specific responsibility for maintaining and enforcing all legal requirements which relate to such records. Each agency shall maintain an up-to-date listing of all employees who have access to such data. Except when collection of personally identifiable information is specifically authorized by federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation and enforcement of federal legal requirements. The Colorado Department of Education does not collect or maintain personally identifiable information relating to a special education assignment according to policies established by State Archives.

7. Destruction of Personally Identifiable Data

The educational agency or institution shall not destroy any educational records when there is an outstanding request to inspect and review them. Prior to destruction of data, an educational agency or institution shall notify the parents when information held is no longer needed and, that they have the right to be provided with a copy of any data which has been obtained or used in determining special education placement and services. Upon request by the parents that information must also be destroyed when it is no longer needed. The information to be destroyed shall not include those data which are routinely collected and maintained on all

school children, including the student's name, address, phone number, grades, attendance records, classes attended, grade level completed, and year completed.

Agencies will adopt policies and procedures in keeping with the above paragraph relating to the destruction of data.

8. Children's Rights Under Confidentiality

All rights indicated herein with regard to parents/guardians and children shall pass to the child upon reaching age eighteen (18), except in the case of a child with disabilities who is legally determined by a court having jurisdiction to be incompetent to make such decision for himself or herself, and for whom legal guardianship is required beyond the age of eighteen (18). In those cases, the legally-established guardian shall maintain the rights of confidentiality.

9. Enforcement

The Department of Education, in its monitoring of educational agencies and institutions, shall require that proper procedures adopted by the State Board of Education shall be maintained and that local school districts have adopted appropriate policies. Those sanctions as described in Section XV, B 2 shall apply.

IX. PROTECTION IN EVALUATION PROCEDURES

A. Policy

The Colorado Department of Education has the responsibility to ensure that agencies providing educational services to children with disabilities have developed and implemented procedures to protect children in need of special education during the evaluation process.

B. Procedures

The procedures described below are required by the Colorado Department of Education to insure that agencies providing special educational services protect children during the evaluation process. Administrative units must adopt procedures that conform to those listed.

1. Each administrative unit shall assure by the provision of written documentation in the local comprehensive plan, that a full and comprehensive individual evaluation of a child suspected of being handicapped is provided before such child is determined to be handicapped and placed in a special education program or provided special education and related services. Evaluation means procedures used to determine whether a child is disabled and the nature and extent of the special education and related services that the child needs. It also means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade or class. Such evaluation is conducted every three years or more frequently if conditions warrant of if the child's parent or teacher requests an evaluation. The following procedures shall apply:

a. No single test or single evaluation may ever be used as sole criterion for the determination of a handicapping condition and placement in a special education program or provision of special education services. Each administrative unit shall assure that all evaluations conducted for the purposes indicated above are multidisciplinary; and that testing and evaluation materials and procedures utilized for evaluation and placement of children with disabilities are racially and culturally nondiscriminatory.

Each administrative unit shall maintain a listing and description of evaluations to be used in each area of assessment.

This list should include evaluations which are both norm and criterion referenced. These procedures must ensure that norm referenced evaluation tools are valid and reliable for the area in which they are used.

The Department of Education shall monitor the actual implementation of the state and local comprehensive plans as they relate to Protection in Evaluation Procedures through the onsite process. Because all evaluations must be multidisciplinary, no single test shall be used or no individual professional shall make the final judgment about the performance of a child in all disciplinary areas.

The Department of Education requires the utilization of qualified professionals to assess in each discipline. While an individual professional may assess in more than one area, no single professional may be responsible for all areas of assessment.

b. Each administrative unit shall assure through written procedures in its local comprehensive plan that children are assessed in the appropriate language and/or the use of nonverbal techniques with tests and evaluation materials which are culturally and racially nondiscriminatory. Children who cannot read, write, speak, or understand the English language as determined through appropriate testing, may not be assigned to special education services on the basis of criteria developed solely upon the command of English language. When an administrative unit is evaluating a student whose primary language is other than English and an interpreter cannot be found, the Colorado Department of Education will work with the administrative unit to identify an interpreter and/or develop a plan which ensures that the student receives an evaluation which does not discriminate on the basis of language.

c. For formal assessment purposes, tests and other evaluation materials must be validated for the purpose for which they are intended. Appropriate sources shall also be used to determine if evaluations are culturally and racially discriminatory.

d. Trained personnel evaluating students shall use evaluation materials only in accordance with the specific purposes for which such materials have been recommended and in accordance with instructions provided by the test procedures. This does not preclude the utilization of such tests for informal assessment.

e. Since placement may not be made on the basis of a single general intelligence quotient, evaluation procedures and tests adopted for use by the local administrative unit must be tailored to assess specific areas of educational needs.

f. Whenever a child with impaired sensory, manual, or speaking skills is being evaluated, the local administrative unit shall use only those evaluation materials which reflect accurately the child's aptitude, achievement level or adaptive behavior, rather than reflecting the child's impaired sensory, manual or speaking skills except where those skills are the factors which the test purports to measure.

g. The multidisciplinary/multifaceted assessment process requires that assessment procedures be completed in sufficient scope and intensity to determine the level of the child's special education needs, by appropriately qualified professional(s) in the area being assessed. At least one member of the assessment team must have knowledge in the area of suspected disability.

h. Administrative unit personnel evaluating students for any special education programs or services must be certificated, endorsed, or otherwise approved by the Department of Education.

2. All requirements for the protection in evaluation procedures will be monitored by the Colorado Department of Education through the process of reimbursement of state funds, local application for federal funds, audits and the onsite monitoring process. In addition, the CDE internal complaint process and the EDGAR complaint process will provide information regarding violation of the state's policy and procedures in protection in evaluation procedures.

X. LEAST RESTRICTIVE ENVIRONMENT

A. Policy

The Colorado Department of Education shall ensure that each administrative unit, and other public or private organizations providing services to children with disabilities, will establish and implement procedures that ensure that children with disabilities and youth are provided a free appropriate public education to the maximum extent appropriate in the least restrictive environment. The least restrictive environment as defined in the Federal rules and regulations refers to 'the educational environment that provides to the "maximum extent appropriate" that children with disabilities are educated with children who are not handicapped. The provision of special classes, programs, separate schooling or other removal of children and youth with disabilities from the regular educational environment shall occur only when the nature or severity of the handicap is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. Each administrative unit, other public agency, or private organization providing services to children with disabilities and youth shall provide the Department of Education the following assurances:

1. That each handicapped child's placement shall be reviewed at least annually.

2. Each handicapped child's educational placement is based on his or her individualized educational program. Placement shall be made based upon the following considerations:

   a. Children shall be placed on the basis of individual needs and not as a result of a category of handicapping condition or configuration of the service delivery system.

   b. Placement shall not be made on the basis of the availability of related services.

3. IEP development, review, and revision, annual review of placement, and re-evaluations are conducted or supervised by personnel responsible for the provision of free appropriate public education to each child served by the public agency.

4. A continuum of placements and an array of services are available to meet the needs of children with disabilities for special education and related services and to implement each child's IEP.

5. That unless a handicapped child's IEP requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; if a handicapped child cannot attend his or her home school, the handicapped child's educational placement is as close as possible to the child's home.

6. That in selecting the least restrictive environment consideration is given to any potential harmful effect on the child or on the quality of services he or she needs.

7. If a handicapped child is removed from the regular classroom, placement in a chronologically age appropriate setting must be provided.

8. That nonacademic and extracurricular services and activities that are provided shall be available to children with disabilities to the maximum extent appropriate with nonhandicapped children. Nonacademic and extracurricular services and activities shall include but not be limited to:

   a. Counseling services.

   b. Athletics.

   c. Transportation.

   d. Health services.

   e. Recreational activities.

   f. Special interest groups or clubs sponsored by the public agency.

   g. Referrals to agencies which provide assistance to handicapped persons.

h. Employment of students, including employment by the public agency and assistance in making outside employment available.

9. That in instances where academic instruction is provided in special classes, or other restrictive settings: nonacademic and extracurricular activities must be provided to children with disabilities in the regular or least restrictive environment to the maximum extent appropriate.

10. That each child with disabilities in any educational setting must be afforded the opportunity to participate in the regular physical education program available to nonhandicapped children, unless the child needs specially designed physical education, as prescribed in the child's IEP. That physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education to the same extent that such services are received by non-handicapped students. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for them to be provided through other public or private programs.

11. That in the educational environment, children with disabilities shall have available to them any program or activity in which nonhandicapped students participate, including:

    a. Art.

    b. Music.

    c. Industrial arts.

    d. Consumer education.

    e. Homemaking education.

    f. Vocational education, specifically designed if necessary to enable the handicapped child to benefit from these programs.

B. Procedures

In order to ensure the least restrictive environment placement, the following procedures shall be followed:

1. A multidisciplinary/multifaceted assessment shall be conducted on all children suspected of being handicapped.

2. The present level of functioning of the child shall be determined by the staffing team.

3. The needs of the child shall be identified.

4. It shall be determined whether or not the child is handicapped.

5. Needs shall be clustered and prioritized.

6. Annual goals shall be developed.

7. The nature, scope and intensity of the services shall be identified.

8. The staffing team shall consider all possible alternative placements where the services may be provided. The staffing team shall recommend placement in the least restrictive environment which most accurately reflects the needs of the student and gives appropriate consideration to the desire of the parents/guardian.

9. The director of special education, or designee, shall place the handicapped child in the least restrictive environment, consistent with the recommendations of the staffing team of which parents are members.

C. Monitoring

1. If it is suspected that an administrative unit is violating the least restrictive environment concept in its placement of children with disabilities, the Department shall monitor in the following manner:

a. Identify the types of placement options available.

b. Identify the number of children with disabilities by ages, services needed and settings.

c. Identify the number of placements available in each setting.

d. Identify the types and amount of related services needed, available and provided.

2. If it is determined that the administrative unit utilizes a disproportionate number of segregated buildings, or if a specific segregated setting is being monitored, the following information at the building level may be collected, reviewed and analyzed. This information may include:

a. Number of children with disabilities by ages.

b. Types of instructional services being provided and the number of children with disabilities served in the setting.

c. Types and amount of related services available and provided.

d. Types and amount of extracurricular and nonacademic activities available.

e. Numbers of children with disabilities in extracurricular and nonacademic activities.

f. Types of program options available to nondisabled children (including physical education).

g. Numbers of children with disabilities in program options.

3. If it is determined that the administrative unit utilizes a disproportionate number of segregated or self-contained classrooms, or if a specific segregated facility is being monitored, the following information at the special education classroom level may be collected by the Colorado Department of Education, reviewed and analyzed. This information may include:

   a. Number of children in the classroom.

   b. Needs of the students represented in the classroom.

   c. Age of children in the classroom.

   d. Name or type of curriculum used.

   e. Number of children receiving related services.

   f. Type of related services being received.

   g. Types and amount of interactions with nonhandicapped peers.

   h. Type and amount of extracurricular and non-academic activities.

   i. Number of children with disabilities participating in regular physical education programs.

   j. Number of hours per day in the regular classroom.

4. When there is concern regarding an individual student placement and the provision of services in the least restrictive environment, and no federal complaint or due process hearing is pending, information at the student level may be provided to the Colorado Department of Education, by the administrative unit. At a minimum, this information may include:

   a. Documentation that IEP's are complete.

   b. Date that the IEP was completed.

c. Documentation of personnel participating in placement decisions.

d. Documentation that personnel making the placement decision are knowledgeable about the handicapped child, the evaluation data and placement options.

e. Date of annual review of placement.

f. Date of previous annual review of placement.

g. Name of school child would have attended if not handicapped.

h. Written justification which demonstrates that a child is removed appropriately.

(1) Documentation of nonsatisfactory achievement on IEP or corresponding document.

(2) Documentation that participation with nonhandicapped students is a reason for unsatisfactory achievement or that IEP objectives are not being met in the integrated settings.

(3) Documentation that instructional methodologies, curriculum or other education factors have been changed or adopted to meet the child's needs:

(a) Compatibility between child's learning style(s) and the teaching approach.

(b) An analysis of the appropriateness of the curriculum and related services.

(c) Assessment of the validity of the short-term instructional objectives.

(d) A review of previous attempts to alter or adapt instructional objectives, instructional methodologies, curriculum, classroom organization, and staffing patterns.

i. Type and amount of related services provided.

j. Type and amount of interactions with non-handicapped peers.

k. Characteristics of the student.

l. Type and amount of extracurricular and nonacademic services provided.

m. Number of hours per day in the regular classroom.

D. Dissemination

The Department shall disseminate the policies and procedures contained in the State Plan relative to the least restrictive environment concept to all administrative units and other public agencies and not for profit organizations providing services to children with disabilities. This shall be accomplished within sixty (60) days of formal approval of the State Plan. In addition, copies of these procedures will be made available to parents and other interested parties upon request.

E. Training and Technical Assistance

1. The Department shall provide training on the issues concerned with meeting the unique needs of children with disabilities in the least restrictive environment. At a minimum, this shall include:

a. The identification of issues for the current year.

This shall be accomplished through the needs assessments conducted for the annual Comprehensive System of Personnel Development plan.

b. Identification of staff members and other persons and agencies capable of providing training.

c. Training made available to:

(1) Parents.

(2) Administrators.

(3) Teachers (both special and regular education teachers).

(4) Service providers.

d. Collection of data by school year on the number and types of participants in the training.

2. The Department shall provide training on best practices and innovations in meeting the unique needs of children with disabilities in the least restrictive environment. At a minimum, this shall include:

a. The identification of best practices and innovations in serving children with disabilities in the least restrictive environment.

b. The making available of staff or adequate resources to conduct the training.

c. Training made available to:

(1) Parents.

(2) Administrators.

(3) Teachers.

(4) Service Providers

d. The collection of data by school year on the numbers and types of participants in training on best practices in the implementation of the least restrictive environment concept.

3. The Department shall make available technical assistance to ensure that adherence to the least restrictive environment is attained. The Department shall:

a. Record the number of requests for technical assistance.

b. Record the number of times technical assistance was provided.

c. Document the reasons why requests for technical assistance were not met.

At a minimum, the Department shall make available the following topics for technical assistance to public and not for profit agencies regarding the least restrictive environment service delivery issues:

a. Preparation of the regular school for handicapped students:

(1) Nonhandicapped students.

(2) Handicapped students.

(3) Regular education teachers.

(4) Special education teachers.

(5) Administrators.

(6) Related service personnel.

(7) School support staff.

(8) Parents of nonhandicapped students.

(9) Parents of handicapped students.

b. Delivery of related services.

c. Transportation issues and solutions.

d. Elimination/solutions to architectural barriers.

e. Strategies to 'promote social interaction between handicapped and nonchildren with disabilities.

f. Implementing best practices.

XI. EDUCATIONAL SURROGATE PARENTS

A. Policy

Whenever the parent or guardian of a handicapped student is unknown, or the student is a ward of the state, a surrogate parent shall be assigned to represent the student in all educational decision-making processes pertaining to the identification, evaluation, and educational placement of the student and the provision of a free, appropriate public education to the student (34 CFR 300.514 (e)).

B. Procedures for Educational Surrogate Parent

1. Children Requiring an Educational Surrogate Parent

A student with disabilities or a student referred for special education evaluation shall require an educational surrogate parent when:

a. Parental rights have been terminated by the courts and such student with disabilities has not been adopted.

b. Custody has been awarded to the Department of Social Services by the courts, except in cases where a student with disabilities has been placed by the Department of Social Services in the home of the student's relative who can then act as a guardian for that student.

c. Commitment to the Division of Youth Services involves a student with disabilities whose parents are unknown.

d. Parents or guardians of a student with disabilities are unknown and custody has not been awarded to the Department of Social Services.

e. The student is a legally emancipated minor.

f. The child does not have a guardian ad litem with authority to make educational decisions.

2. Determination For Need To Appoint An Educational Surrogate Parent.

a. Within five (5) days of the decision to take any action pertaining to the identification, evaluation, placement or provision of a free appropriate public education to a student which requires requiring parent participation, notice, or consent, a representative designated by the district shall:

(1) Initiate contact with the child's parent by telephone and letter to establish that the parent can be located. If the parent cannot be located by phone and letter, the district shall take similar steps (telephone and letter) to establish contact with a relative, or an individual with whom the child resides, and/or the individual agency which is legally responsible for the child's care and education.

(2) Determine if the person located is the natural or adoptive parent, a guardian, or a person acting as a parent of the child and eighteen (18) years of age or older, then an educational surrogate parent need not be appointed.

(3) Within five (5) days of the initial attempt to locate and identify the parent, make a written recommendation to the local special education director to appoint an educational surrogate parent if the criteria in (2) are not met.

b. Within three (3) days of the date of the written recommendation, the local special education director must appoint an educational surrogate parent for the child who meets the qualifications set forth in Section 3 below.

3. Qualifications of Educational Surrogate Parents

a. An educational surrogate parent is qualified if the person:

(1) Is at least 18 years of age and has no interest which conflicts with the interests of the child.

(2) Is not an employee of any agency involved in the education or care of the child.

(3) Is not an employee of an agency which is responsible for the child as ward of the state.

(4) Possesses the necessary knowledge and skills to adequately represent the child.

(5) Is able to exercises the responsibilities of a surrogate parent in a manner which protects the rights and interests of the child.

(6) Is a resident of Colorado.

(7) Receives instruction about state and federal laws and regulations, due process procedures, handicapping conditions and the availability of programs and services for handicapped students, as provided through training by the Colorado Department of Education or through training from someone trained by CDE.

4. Nomination Of Educational Surrogate Parents

a. The Colorado Department of Education's, Special Education Services Unit Executive Director shall be notified in writing of the names of persons of good moral character, recommended as potential educational surrogate parents by:

(1) Department of Social Services case workers.

(2) The local director of special education of the local administrative unit.

(3) Various civic organizations having an interest in students with disabilities.

(4) Department of Institutions and its various divisions.

5. Appointment Of Educational Surrogate Parent

a. The Executive Director of Special Education for the Colorado Department of Education Special Education Services Unit shall prepare, maintain and distribute to appropriate parties a list of individuals with knowledge and skills necessary to effectively represent a child with disabilities throughout the educational decision-making process.

(1) The Executive Director shall not include any individual on this list who has not received training, including handbooks and materials, regarding the role of the surrogate parent, the rights and responsibilities of parents in the educational decision-making process, the procedure which an educational surrogate parent should follow if the educational surrogate parent's role may create a conflict with the interest of the child, including the procedure for immediately notifying the Executive Director if such a potential conflict exists.

(2) The list maintained by the Executive Director must include information about each individual's current employment history, previous and current experience regarding children with disabilities (e.g., has the individual served as a guardian for other children, or has the individual had specific expertise in special education or related fields?), and any information regarding possible conflict of interest (e.g., participation in organizations, relatives employed by a public agency involved in education or care of the child).

b. The local administrative unit director of special education shall select an individual from the list for consideration as an educational surrogate parent.

c. The local administrative unit director of special education must immediately appoint the individual so selected and shall record such appointment in the student's record.

d. The individual selected must accept the appointment in writing.

e. If the individual does not meet the criteria set forth, the local administrative unit director of special education must select another individual from the list and apply the criteria set forth and make the appointment as specified.

f. The individual appointed as an educational surrogate parent shall, whenever possible, reside no further than 75 miles from the location in which special education services are provided.

6. Training For Educational Surrogate Parents

a. Initial Training

Initial training for potential educational surrogate parents shall be provided by the Colorado Department of Education, which shall award certificates of training to successful candidates.

b. Follow-up Training

Follow-up training programs shall be provided as deemed appropriate by the local special education directors of the school districts.

c. Certificate of Training

The Department of Education shall issue certificates to individuals who have been trained as educational surrogate parents. The certificate shall record the date of the training and the effective date of the certificate.

d. Notification of Districts

The Department of Education shall notify the appropriate district or other public agency of the availability of educational surrogate parents who have obtained certificates.

7. Responsibilities, Tenure, and Reimbursement

a. Responsibilities of An Educational Surrogate Parent

Each person assigned as an educational surrogate parent shall represent the handicapped student in all education decision-making processes concerning that student by:

(1) Becoming thoroughly acquainted with the student's educational history and other information contained in school records and reports relating to the student's educational needs.

(2) Granting or denying permission for initial evaluation or placement, complying with state and federal law as to the confidentiality of all records and information pertaining to the student to which he/she is privy, including using discretion in necessary sharing of information with appropriate people for the purpose of furthering the interests of the student.

(3) Participating in the development of an IEP for the student.

(4) Reviewing and evaluating special education programs pertaining to the student and other such programs as may be available.

(5) Initiating mediation, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the student, and seeking qualified legal assistance when such assistance is in the best interest of the student.

(6) Taking part in training provided to familiarize him/her with state and federal laws and regulations, due process procedures regarding the education of handicapped students, information about handicapping conditions, and the availability of programs and services for such students. 34 CFR 300.514 (e).

b. Tenure Of The Educational Surrogate Parent

(1) The tenure or term of services of the educational surrogate parent shall be:

(a) The length of time which the educational surrogate parent is willing to serve.

(b) The length of time the student requires a surrogate parent.

(c) So long as the qualifications to serve as an educational surrogate parent are met.

(2) Termination of services of an Educational Surrogate Parent

(a) If the educational surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify, in writing, the superintendent of the school district in which the student is receiving special education services at least fifteen (15) days prior to termination of such services.

c. Reimbursement for Services as an Educational Surrogate Parent

Surrogate parents shall be reimbursed by the Colorado Department of Education for travel expenses incurred in pursuit of duties. Such this shall include reimbursement for in-state travel to attend meetings regarding the student. Such reimbursement shall be subject to the state's fiscal rules.

8. Liability Of The Educational Surrogate Parent

A person appointed as an educational surrogate parent is not liable for actions taken in good faith on behalf of the student in protecting the special education rights of the student.

C Appointment of a Guardian Ad Litem

a. Colorado Statute (Section 19-3-203 C.R.S.) provides for a guardian ad litem to be appointed in cases of an allegation of abuse or neglect concerning a child. Payment of persons appointed as guardians ad litem shall be by the court. The criteria for determining which children will have a guardian ad litem, and the qualifications of guardian ad litem, will be in accordance with Colorado statute. (Appendix A)

1. The guardian ad litem, may be given authority by the court to represent the child in all matters relating to the identification, evaluation, and educational placement of the child and provision of a free appropriate public education.

XII. PARTICIPATION OF PRIVATE SCHOOL CHILDREN PLACED BY THEIR PARENTS

A. Policy

The Colorado Department of Education shall assure that Colorado private school students will have the opportunity to participate in local administrative unit programs to receive special education and related services consistent with the provisions found in 34 CFR 76.651-76.663. (Appendix A).

B. Procedures

1. Local administrative units shall establish in their comprehensive plans a process by which children with disabilities attending private schools and needing special education and educationally related services shall be provided these services in such a manner that the quality, scope, and opportunity for participation are comparable to those provided for students enrolled in the public schools.

2. Services provided to private school children with disabilities may be made available through arrangements such as dual enrollment and through the use of educational television and radio, or mobile educational services and equipment.

3. Public agencies serving private school children with disabilities shall consult with private school representatives to determine:

   a. How children will be identified and determined eligible for services.

   b. Which children shall receive services.

   c. What services will be provided.

   d. How those services will be provided.

   e. How the effectiveness of the services delivered will be evaluated.

f. The process to be followed before any changes effecting the opportunities of private school children with disabilities is made.

4. Public agencies providing services to private school children with disabilities shall, when providing services on a public school site, organize the classes so that the students are not separated on the basis of school enrollment or religion and the classes include students from both public and private schools.

5. Personnel employed by a public agency may provide services to children with disabilities enrolled in private facilities so long as the services being provided are entirely under the control of the public school and the use of public school personnel is necessary to provide equitable program benefits to private school students not normally provided by the private school.

6. Payment for services provided by private school personnel may be made only for those services provided outside the hours of duty of those personnel and when such personnel are under public supervision and control.

7. A public agency shall have a process so as to assure that mobile or portable equipment purchased with Title VI-B funds is placed on private school sites solely for the purpose of the special education program and for the benefit of children with disabilities and the title to, and control over, such equipment will remain with the public agency.

8. Public agencies utilizing funds to provide services to private school children with disabilities shall provide private schools in their jurisdiction with:

   a. A copy of the "Participation of Private School Children Policy".

   b. A copy of Colorado's Exceptional Children`s Educational Act, Section 22-20-1031 ET SEQ.

   c. A copy of the Rules for the Administration of the Exceptional Children's Educational Act.

d. A copy of the IDEA and its implementing regulations.

9. The Colorado Department of Education shall evaluate as part of its monitoring process of local administrative units the following:

   a. The LEA's process for referral, identification, placement and provision of services to children attending private schools and needing special education and educationally related services.

   b. Expenditure of funds supporting children served in private schools to assure that:

      (1) Funds are not used for construction or other purposes expressly prohibited by this section, Federal Rules or State Statutes, and Rules.

10. When a child with disabilities is offered a free appropriate public education in the local administrative unit or in a public agency and the parents waive that opportunity in favor of a private school placement, the administrative unit shall not be required to pay for the child's placement at the private school or facility.

   a. Should the parents of a child with disabilities claim that an appropriate program does not exist within the local administrative unit, and the local administrative unit disagrees, that disagreement and the question of who remains financially responsible will be a matter to which the due process procedures apply, utilizing those procedures established in Section VII, Procedural Safeguards.

   b. For handicapped children placed in a private school, the local administrative unit having responsibility for the child shall provide for the participation of such child in programs assisted or carried out with Title VI-B funds.

11. The Colorado Department of Education shall:

    a. Monitor local administrative units to insure that they have established procedures to assure that private school handicapped children are provided with genuine opportunities to participate in special education services supported with Title VI-B funds, and to assure that the children placed in private schools have special educational programs at least as adequate and appropriate as they would have if educated in a public school.

    b. Invite private school participation in the development and revision of standards relating to special education in a manner similar to local administrative unit participation.

12. Whenever children with disabilities are placed with parental consent in the Colorado School for the Deaf and the Blind, agencies of the Department of Institutions which provide residential programs and services for handicapped children, community centered boards and residential child care facilities which are quasi-public corporations providing residential programs and services for children with disabilities under contract with the Department of Institutions, the children will be provided special education and related services consistent with the requirements under this Plan.

XIII. PLACEMENT IN PRIVATE SCHOOLS BY THE ADMINISTRATIVE UNIT OR OTHER PUBLIC AGENCIES

A. Policy

The Colorado Department of Education shall assure that all children with disabilities between the ages of three through twenty-one (3 through 21), placed in or referred to a private school or facility by administrative units or other public agencies, shall be provided a free appropriate public education including special education and educationally related services consistent with the students' Individual Educational Program (IEP); and shall have all the rights of children with disabilities placed in a public agency.

B. Procedures

The following procedures shall be undertaken in implementing the placement in private schools policy:

1. Whenever children with disabilities are placed in private schools or facilities the administrative unit shall:

   a. Have procedures for monitoring the progress of students placed in private schools.

   b. Have procedures which include provisions to initiate and conduct joint planning and evaluation conferences and annual reviews, which include procedures to insure the attendance and participation in the meeting of a representative of the private school or facility.

   c. In the event a representative cannot attend, use other methods to insure participation by the private school or facility, including individual or conference calls.

2. Whenever the administrative unit or other public agency recommends a child for placement in a private school and wishes to use funds to support a portion of the costs of such placement, the local administrative unit or other public agency shall:

a. Contract with the private school or facility to assure that the private school or facility will:

(1) Afford students and parents all procedural safeguards assured by the state under this Plan, and implemented by the administrative unit.

(2) Employ personnel who meet the professional standards established by the State Board of Education, neither the personnel employed nor the agency itself will not be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(3) Meet the requirements for special education and related services as stated on the student's Individual Educational Program.

(4) The contract will be written so that the subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

b. Have established procedures to periodically review the contract.

c. Insure that equitable opportunities are provided for participation by students enrolled in private schools who have the same needs as public school students to be served and are in that group, attendance area or age or grade level.

d. Insure that program benefits for students enrolled in private schools are different from benefits provided to public school students in accordance with the different needs of the private school students.

3. Assure that to the maximum extent appropriate children in private or public institutions or other care facilities are educated with children who are not disabled and that any removal from regular education programs occurs only when the severity of the handicap is such that even with the use of supplementary aids and services education in reguolar education cannot be achieved satisfactorily.

4. Monitor compliance through procedures such as written reports, on-site visits and other means, and provide an opportunity for private schools and facilities to participate in the development and revision of state standards which apply to them.

5. Through its monitoring procedures the Colorado Department of Education shall ensure that subgrantees comply with the requirements of §§76.651-76.662.

6. If the State is responsible for carrying out a project directly, it shall comply with these requirements as if it were a subgrantee.

XIV. COLORADO DEPARTMENT OF EDUCATION ANNUAL PROGRAM EVALUATIONS

A. Policy

The Colorado Department of Education ensures the development of procedures for:

1. Evaluating, at least annually, the effectiveness of programs in meeting the educational needs of handicapped students, including evaluation of IEPs. (34 CFR 300.146)

2. Qualitatively evaluating educational services rendered to students with disabilities. (Section 22-20-104 (3), C.R.S.)

3. Complying with the requirements of the Secretary of Education.

B. Procedures

1. The effectiveness of programs in meeting the educational needs of handicapped students shall be evaluated in the following manner:

   a. Each year information will be collected from all agencies serving children with disabilities. This information will be analyzed to determine areas of strength and weaknesses in serving handicapped students.

   b. Each administrative unit shall be reviewed comprehensively every five (5) years to determine:

      (1) Its compliance with federal and state regulations.

      (2) The effectiveness of the delivery system utilized by the unit.

      (3) The comprehensiveness of the delivery system to assure compliance with the "Full Educational Opportunity Goal."

(4) The effectiveness of the IEPs. On each on-site visitation as part of the comprehensive review, a sampling of IEPs shall be selected by members of the visitation team to determine their effectiveness. IEPs will be selected and analyzed for their compliance with federal and state regulations and evaluated for their effectiveness. The size of the sample will be one (1) percent of the total students in special education but not less than fifteen (15).

c. Each year the Department shall identify specific service areas or procedures that are to be evaluated by all or designated units within the state. This information shall be aggregated and used to determine indicators of effectiveness.

d. All SEA-initiated projects shall be required to have an evaluation component to assist in determining the effectiveness of the projects.

2. Educational services shall be evaluated qualitatively in the following manner:

a. During the comprehensive on-site visitation, each educational program or type of service shall be evaluated by members of the on-site team. The criteria for quality are these indicators:

(1) Those previously established by representatives of all administrative units, or

(2) Those established through the evaluation project as outlined above.

3. The Department shall comply with the requirements of the Secretary of Education by:

a. Cooperating in the carrying out of any evaluation of a program conducted by or for the Secretary of Education or other federal officials.

b. Reporting to the Secretary of Education the results of required program evaluations as may be necessary to perform his or her duties.

c. Maintaining records of evaluations and affording access to those records as the Secretary may find necessary to carry out his or her duties.

XV. ENFORCEMENT OF SEA POLICIES AND PROCEDURES

A. Policy

1. The Special Education Services Unit, acting on behalf of the Colorado State Board of Education, has the authority to conduct monitoring and audits including collection and use of both off-site and on-site information.

2. The Colorado Department of Education, acting on information provided by the Special Education Services Unit, has the authority to compel the correction of deficiencies identified in program operations.

3. The Colorado Department of Education, acting upon information provided by the Special Education Services Unit, has the authority to enforce legal obligations.

4. Colorado Department of Education rules relative to special education and related services are applicable to and binding upon all educational programs for students with disabilities administered within the state.

B. Procedures

1. The SEA will employ the following procedures to enforce corrective action.

   a. Describe each corrective action which must be taken.

   b. Require that a corrective action plan be submitted by the administrative unit within sixty days which provides for:

      (1) The discontinuance of the deficiency.

      (2) The prevention of the occurrence of any future deficiency.

      (3) Documentation of the initiation and completion of actions to achieve current and future compliance.

      (4) The time frame for achieving full compliance.

(5) The description of actions the agency must take to remedy the identified areas of noncompliance.

c. Provide technical assistance which will help achieve compliance.

2. Enforcement Procedures shall be as follows:

If the CDE is unable to secure voluntary compliance through the action outlined in Section XV, B, 1 the Commissioner of Education shall notify the district of noncompliance in writing and shall recommend to the State Board of Education that the Board consider one of the following or any other means of enforcing the findings of noncompliance and a copy of such recommendation shall be submitted to both parties by certified mail, return receipt requested:

a. disapprove, or fail to approve in whole or part, the application of the local agency, administrative unit or potential recipient for funding;

b. order, in accordance with a final state audit resolution determination, the repayment of misspent federal funds;

c. withhold and/or terminate further assistance to a local agency, administrative unit or recipient for an approved project;

d. provide funds in accordance with the requirements of law and regulations and the findings of the Complaints Officer;

e. suspend payments, under an approved project, to a local agency, administrative unit, or recipient.

3. The State Board of Education shall adopt one of the above-stated means of enforcing the finding of noncompliance or any other means it deems appropriate and both parties shall be notified of the State Board's action by certified mail, return receipt requested.

4. Any respondent, such as a local school district, Board of Cooperative Services, or state level governmental entity who is an applicant or a potential/present recipient of federal funds aggrieved by the action of the State Board of Education, shall have the opportunity for a de novo hearing before an impartial hearing officer.

5. A hearing request must be made in writing within thrirty (30) days of the action of the State Board of Education. The written request for a hearing shall be directed to the Colorado Commissioner of Education and shall state the reasons a hearing is being requested. A request is filed as of the date it is received in the Commissioner's Office.

6. The hearing shall be held within thirty (30) days of receipt of a request for hearing by the Commissioner. Each party to the hearing shall be notified at least five (5) days prior to the hearing of the time, date, and place of the hearing.

7. The hearing shall be conducted by an impartial hearing officer designated by the Colorado Department of Education.

8. The burden of proof at the hearing shall be upon the Colorado Department of Education.

9. The hearing officer shall issue a written ruling, including findings of fact and conclusions of law, to all parties involved within ten (10) days after concluding the hearing. The written ruling shall be the final state level decision unless appealed to the State Board of Education within ten (10) days of the date of the ruling. An appeal to the State Board shall be directed to the Board's Assistant and shall clearly state the reasons for filing the appeal. If appealed, the State Board of Education may review the entire record, and if the findings of fact of the hearing officer are supported by substantial evidence, the findings shall not be changed.

10. If CDE's action was contrary to state or federal statutes or regulations that govern the applicable program, CDE shall rescind its action.

11. If CDE does not rescind its final action, the respondent may appeal to the United States Secretary of Education by filing a notice of appeal within twenty (20) days after the respondent has been notified by CDE of the results of the review.

12. Unless appealed to the Secretary, the State Board of Education shall authorize the Colorado Department of Education to enforce the final state level decision.

13. If a federal or state court already has jurisdiction of the unmet compliance responsibilities identified by the Colorado Department of Education, the State Board of Education will request that the State Attorney General intervene (if not already a party) in order to assert the SEA's interests in compelling full compliance by the administrative unit at the earliest possible time.

XVI. RECOVERY OF FUNDS FOR MISCLASSIFIED CHILDREN

A. Policy

The Colorado Department of Education, Special Education Services Unit, will recover any funds made available for services to children with disabilities who are not eligible to be counted. In order to qualify for funds, children with disabilities must meet eligibility requirements specified by Colorado and federal statute and regulations. Private schools are ineligible to receive funds unless the placement of children with disabilities has been initiated by a local administrative unit and with consent of the parents.

B. Procedures

Count audits will be conducted onsite and will be used as the primary method to determine if students were counted appropriately.

The count audit teams will randomly select a sample of files of students counted The files will be examined to determine if students:

1. Are within appropriate age ranges to receive services on the date of the count.

2. Had an IEP in place on the date of the count.

3. Were enrolled on the date of the count (had not graduated).

4. Were counted once on this count.

5. Were not counted in the Chapter 1, elementary and secondary education act count.

6. Had been classified with one of the handicapping conditions listed in Colorado's Rules and Regulations for the Administration of the Exceptional Children's Educational Act.

7. Had been provided with all procedural safeguards.

Should it be determined that one of the criteria listed in one through seven above has been violated, the local administrative unit shall be directed to restore the amount of funds involved to the Colorado Department of Education and co-sign final audit reports to confirm the return of administrative unit funds to the state level.

XVII. USE OF FUNDS AVAILABLE UNDER OTHER FEDERAL PROGRAMS

A. Policy

Each administrative unit, other public agency, nonprofit organization or residential child care facility, which provide for the education of children with disabilities, shall use any federal funds they receive in a manner consistent with the goal of providing a free appropriate public education to all children with disabilities. It is not the intent of this section to limit the specific requirements of the laws governing those federal programs.

B. Procedures

Each administrative unit, other public agency, nonprofit organization, or residential child care facility which provide for the education of children with disabilities, shall set forth in its comprehensive plan how it will insure that other federal funds are used in a manner consistent with the goal of providing a free appropriate public education to all children with disabilities. The submission of an annual application and a triennial local comprehensive plan shall be a part of the process used to obtain funds.

The Colorado Department of Education, through its monitoring process, will determine if funds received from other federal programs are being used in a manner consistent with the goal of providing a free appropriate public education to children with disabilities. This will be accomplished through the review of records and interviews with staff members.

If it is determined that programs provided to children with disabilities with other federal funds are impeding the provision of a free appropriate public education to children with disabilities, the Colorado Department of Education's Special Education Services Unit shall work with the administrative unit or other public agency, nonprofit organization or residential child care facility and the granting agency to resolve any conflicts.

XVIII. CONSOLIDATED APPLICATIONS

A. Policy

All Colorado administrative units currently receive more than $7,500.00 and are not required to submit consolidated applications. However, the Colorado Department of Education shall accept consolidated applications from recognized administrative units. An administrative unit may include a school district, board of cooperative services, or other cooperative between two or more school districts and/or boards of cooperative services. Each administrative unit must satisfy the standards set forth in the Rules for the Administration of the Exceptional Children's Educational Act.

If two or more administrative units submit a consolidated application, such application shall demonstrate how services to children with disabilities can be improved through the use of a consolidated application. In addition, each administrative unit must document the ways in which joint responsibilities for implementing programs and receiving payments will be implemented. No administrative unit may shift its responsibility for the provision of a free appropriate public education of children with disabilities to another administrative unit through the use of a consolidated application.

B. Procedure

If two or more administrative units determine that services to children with disabilities can be improved through the use of a consolidated application, they shall submit the application to the Colorado Department of Education for approval. Such consolidated applications shall provide documentation supporting the benefits to be derived by children with disabilities and the responsibility of each administrative unit.

The Colorado Department of Education shall review each consolidated application for compliance with State and federal regulations and the benefits to children with disabilities.

If the Colorado Department of Education disapproves a consolidated application, it will notify the administrative units involved of the reasons for disapproval and the criteria which must be met before approval will be granted.

XIX. NOTICE AND OPPORTUNITY FOR HEARING ON LEA APPLICATION

A. Policy

Local comprehensive plans under Part B of the IDEA and applications for the use of Part B, IDEA entitlement funds are submitted by each special education administrative unit and other approved agencies to the Executive Director of Special Education Services for the Colorado Department of Education.

Local comprehensive plans shall be submitted at least every five (5) years and applications for the use of Part B funds shall be submitted at least once each year.

The Executive Director of Special Education Services shall then submit the local comprehensive plans to the appropriate staff for review and approval. Applications shall be submitted to the Colorado Department of Education IDEA Coordinator for review.

Within forty-five (45) days of receipt of the local comprehensive plan the Executive Director shall inform the administrative unit or other approved agency in writing whether or not the local plan has been approved and note deficiencies.

Within forty-five (45) days of receipt of all required information the IDEA Coordinator shall inform the administrative unit or other approved agency in writing whether or not the application has been approved.

No administrative unit shall have its application for funds approved until the local plan is approved.

B. Procedure

Applications may be approved as a whole document, in part or denied approval as a whole.

1. Local comprehensive plans or applications which clearly meet all federal requirements shall be approved as a whole.

2. Local comprehensive plans or applications which do not violate the provisions of a free appropriate public education, confidentiality, least restrictive environment, procedural safeguards, protection in evaluation procedures and child identification; but which violate provisions of Qualified Staff, supplanting or EDGAR regulations may be approved in part.

3. Local comprehensive plans or applications which violate the provisions of a free appropriate public education, confidentiality, least restrictive environment, procedural safeguards, protection in evaluation procedures and/or child identification may be disapproved as a whole.

   Notice of disapproval shall clearly state what the applicant must do to comply with federal requirements and indicate that a revised comprehensive plan or application must be submitted within thirty (30) days. If, after that time, a revised or corrected application has not been submitted, or if the revised application does not meet Federal requirements, the Executive Director will notify the administrative unit in writing, that final action on the application will occur within thirty (30) days. A description of the action to be taken and reason(s) for disapproval of the application will be included in the notice. Included also will be an explanation of the procedural safeguards available to the administrative unit or other agency. The procedural safeguards shall be as follows:

   An administrative unit may initiate a request for a hearing by filing a written request with the Commissioner of Education of the Colorado Department of Education. The request must be filed within thirty (30) days after receiving notice of the Colorado Department of Education's intent to take final action on the local comprehensive plan or application and it should state the grounds for appeal.

   The Commissioner shall then place the item on the agenda of a regularly scheduled State Board of Education meeting for review and necessary action.

The administrative unit shall be informed at least ten (10) days prior to the State Board of Education meeting that the State Board will review the local administrative unit's appeal.

The State Board shall communicate in writing the action it has taken with regard to the local administrative unit's application no later than ten (10) days after the meeting.

XX. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

A. Policy

The Colorado Department of Education accepts the responsibility for insuring that procedures are in place to assure that:

1. A system is in place to determine the supply and demand of personnel working with individuals with disabilities.

2. All personnel necessary to carry out the purposes of IDEA are qualified.

3. All general and special educational instructional, related services, and support personnel have an opportunity for inservice training.

4. All public and private institutions of higher education and other agencies (including representatives of individuals with disabilities parent and other advocacy organizations) which have an interest in the preparation of personnel for the education of individuals with disabilities, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

5. Significant information and promising practices are acquired, reviewed and disseminated.

6. Promising educational practices and materials proven effective through research and demonstration are adopted when appropriate.

7. Technical assistance is provided to local education agencies in their implementation of the state's comprehensive system of personnel development.

8. Opportunities for inservice training will be provided for local special education directors.

9. Opportunities for inservice training will be provided for special education staff at the Colorado Department of Education.

B. Procedures

1. The system in place to determine the supply and demand of the personnel working with individuals with disabilities includes the collection of the following data;

   a. The number and type of personnel (including leadership) employed in provision of special education and related services, by specialization, including the number employed on an emergency, provisional or other basis who do not hold State certification/licensure.

   b. The number and type of personnel currently and projections of anticipated need in five years.

   c. The number of students enrolled in training programs relating to the education of students with disabilities.

   d. The number of students who graduated with certification, licensure or credentials relating to the education of students with disabilities.

2. All personnel necessary to carry out the purposes of IDEA shall be qualified:

   a. All professional personnel shall be endorsed, certificated, licensed, or otherwise approved in the professional area of service to which they are assigned. Qualified personnel hold at a minimum one of the following certificates:

(1) The initial certificate for all applicants shall be a Provisional Certificate (Type P). The Type P Certificate is valid for three (3) years and is renewable. Holders of the Type P Certificate are eligible to apply for the certificate appropriate to their area of preparation after completing three (3) years full-time satisfactory experience in Colorado while holding the Type P certificate; an applicant must satisfy the requirements for his/her area of preparation.

(2) Type A: The general Teacher's certificate issued to a person who has been awarded a bachelor's degree from an accepted institution, has completed an approved program of teacher preparation in an accepted institution of higher learning, has demonstrated thorough knowledge of the subject matter to be taught, and has the competencies essential to maintain and improve the quality of instruction in the public schools of the State.

(3) Type B: The Professional Teaching Certificate issued to a person who has a minimum of three (3) years experience under a Type A or Equivalent certificate and has been awarded a Master's or higher degree from an accepted institution of higher education.

(4) Type C: The Vocational Teaching Certificate issued to a person who has completed five (5) or more calendar years of work experience in the specific occupational area in which instruction is to be given and has met such other requirements pertaining to academic and professional preparation or performance as the State Board of Education may establish to maintain and improve the quality of instruction in the public schools of the state.

(5) Type D: The Administrative Certificate issued to a person who has completed an approved program of school administration in an accepted institution of higher education, has completed a Master's or higher degree in an accepted institution of higher education, and has met such other requirements as the State Board of Education may establish concerning professional performance and ability.

(6) Type E: The Special Service Certificate issued to a person who has been awarded an appropriate degree from an accepted institution of higher learning and has met the standards of the State Board of Education concerning academic and professional preparation and experience and performance in one of the following special service areas in the public schools:

(a) School Audiologist;

(b) Occupational Therapist;

(c) Physical Therapist;

(d) School Nurse;

(e) Speech Correctionist;

(f) School Psychologist;

(g) Guidance Counselor;

(h) School Social Worker

(i) Peripatology and other special service areas as the State Board of Education may deem to be necessary.

b. The following professional and discipline areas provide special education or related services

(1) Certificated or Endorsed

(a) Educationally Handicapped

(b) Speech/Language Pathologist

(c) Physically Handicapped.

(d) Visually Handicapped

(e) Hearing Handicapped

(f) Educable Mentally Handicapped

(g) Specialty Teacher: a certified teacher who provides instruction in art, music, physical education and vocational subjects to handicapped students.

(h) Occupational Therapist.

(i) Physical Therapist.

(j) School Nurse.

(k) School Psychologist.

(l) School Social Worker.

(m) Audiologist.

(2) Licensed by the State of Colorado, Department of Regulatory Agencies.

(a) Clinical Psychologist.

(b) Psychiatrist.

(3) Registered with National Organization

(a) Music Therapist.

(c) Recreation Therapist

c. Effective in1990, Colorado now endorses teachers in special education with new teaching certificates in the following areas only:

(1) Special Education Teacher 1: Moderate Needs;

(2) Special Education Teacher 2:

(a) Severe Needs: Cognitive

(b) Severe Needs: Affective

(c) Severe Needs: Vision

(d) Severe Needs: Hearing

(e) Severe Needs: Communication

(3) Special Education Teacher 3: Profound Needs

(4) Special Education Teacher 4: Early Childhood Special Education

d. If an administrative unit is unable to employ a teacher who is properly endorsed, the local special education director may apply for temporary teacher eligibility for a non-endorsed or inappropriately endorsed teacher.

The approval shall be effective for five (5) years from the date of issue, non-renewable, subject to the following conditions:

(1) The individual shall possess a valid Colorado teacher's certificate or a letter of authorization.

(2) The employing administrative unit shall certify that, after reasonable effort to hire an acceptable endorsed special education teacher, none could be found.

(3) At least annually, the administrative unit shall secure evidence of the individual's satisfactory progress toward completion of the appropriate endorsement program within the five-year period.

(4) The procedures for obtaining temporary eligibility for a non-certified or non-licensed staff person needed by a unit to provide support services as defined the Rules for the Administration of the Exceptional Children's Educational Act shall be the same as that defined for use with improperly endorsed teachers.

(5) Each administrative unit will determine the qualifications and competencies required of instructional aides, secretaries, and other non-certificated personnel claimed for reimbursement.

e All first-time applicants for a certificate shall successfully pass a basic competency test.

f. Certificates shall be renewed in accordance with state law.

3. All general and special educational instructional, related services, and support personnel shall have an opportunity for inservice training.

a. Each year, the needs of general and special educational instructional, related services and support personnel shall be identified through the following methods:

(1) A separate needs assessment of the following groups in the following sequence:

(a) First Year: Regular education teachers and special education directors.

(b) Second Year: All related services personnel.

(c) Third Year: Special education teachers and principals.

(2) Data aggregated from the annual reports of all administrative units. These reports include the actual number of full-time equivalent staff persons by positions held for the preceding year, and estimates of the personnel needed for the next two years.

(3) All onsite reports analyzed and the information aggregated to identify specific areas of need.

(4) Regional needs assessments conducted yearly by local directors of special education.

(5) Needs assessments conducted yearly by local education agencies.

b. Needs shall be prioritized and inservice activities developed to meet these needs.

4. All public and private institutions of higher education and other agencies (including representatives of individuals with disabilities, parent and other advocacy organizations) which have an interest in the preparation of personnel for the education of individuals with disabilities shall have an opportunity to participate fully in the development, review and annual updating of the comprehensive system of personnel development.

a. The major coordinating and advisory body to the Special Education Unit for the development and implementation of a comprehensive system of personnel development shall be the Colorado Comprehensive Personnel Preparation Committee (CCPPC). The Committee shall be composed of representatives of the following groups:

(1) Parents.

(2) All private and public institutions of higher education that have programs for personnel working with individuals with disabilities.

(3) Teachers.

(4) The Advisory Committee for Exceptional Children.

(5) The Special Education Services Unit.

b. The purpose of the committee is to:

(1) Plan the yearly needs assessment.

(2) Discuss issues ~~of~~ and make recommendations to the Special Education Services Unit concerning preservice and inservice training programs.

(3) Review and discuss proposed teacher education programs in Special Education prior to submission for approval to the Colorado Commission on Teacher Education and Certification.

(4) Review and make recommendations for the development of Colorado's Annual Comprehensive System of Personnel Development (CSPD) Plan.

c. The Annual CSPD Plan shall be reviewed by all members of Colorado's Special Education Advisory Committee.

d. The Annual Program Plan shall be distributed to and reviewed by all local directors of special education.

5. Significant information which relates to the education of children with disabilities shall be acquired, reviewed and disseminated in the following manner:

a. It shall be the responsibility of designated consultants to identify significant information and promising practices in their areas of responsibility.

b. The information and promising practices shall be disseminated in the following manner:

(1) The Colorado Department of Education will receive the information first.

(2) At directors' meetings, designated topics relating to the handicapping conditions, disciplines, etc. will be presented and discussed.

(3) Significant information and promising practices will be discussed with members of the different consortia established by the staff members.

(4) Workshops, both regional and state wide, will be conducted for the purpose of making appropriate personnel aware of information and promising practices.

(5) Newsletters on staff development activities will be printed and distributed to appropriate target groups.

(6) Information will be disseminated on a regular basis on Specialnet and Easy Link to those units participating in either of the two networks.

6. Promising educational practices and materials proven effective through research and demonstration shall be shared with personnel in the local administrative units.

   a. Practices and materials proven effective shall be identified by the consultant responsible for the handicapping condition or service delivery system.

   b. A description of these practices and materials shall be presented first to members of the Special Education Services Unit for review.

   c. It shall be the responsibility of the program consultant to work with local educational agencies for the implementation of promising practices..

7. Technical assistance shall be provided to local education agencies in the implementation of the State's Comprehensive System of Personnel Development.

a. It shall be the responsibility of both the regional coordinator and the program consultant to make the Special Education Services Unit aware of any assistance needed in the local educational agency.

b. The Special Education Services Unit shall provide the technical assistance necessary to implement the State's Comprehensive System of Personnel Development. Such assistance may be provided by:

(1) The Colorado Department of Education staff members.

(2) Members of the Rocky Mountain Research and Training Institute (established by state agencies for the purpose of coordinating among those agencies better services to individuals with disabilities).

(3) Members of local education agencies who have been identified as having expertise in certain areas.

(4) Nationally recognized consultants brought in by the Department to assist local units.

(5) Institutions of higher education

(6) State consultants

C Needs Assessments

1. The following needs assessments were conducted of the identified groups to determine the nature and scope of Colorado's CSPD Plan:

a. Directors of Special Education: The needs of directors of special education were identified.

b. "A Survey of Colorado Special Education Teachers' and Principals' Inservice Needs".

c. "Special Education Survey of Related Services Providers" a needs assessment of all related services personnel.

d. "Comprehensive System of Personnel Development: Colorado Teachers Needs Assessment" - a survey of the training needs of regular education teachers and special education directors.

2. Inservice activities have been developed to meet the identified needs. These inservice activities have been incorporated into Colorado's CSPD Plan.

3. Needs assessments conducted by the state and in numerous local educational agencies have shown that regular classroom teachers want additional training in strategies, methods and techniques that would improve their abilities to address the individual learning needs of students and that regular as well as special education administrators want to see a closer working relationship between regular and special education.

   In order to coordinate more effectively services necessary to meet the identified needs, the Department has identified the following five-year outcomes including those listed in Section III under specific categories of disabilities.

   a. Regular education teachers will have skills necessary to meet a wide range of educational needs of individuals with disabilities in regular classrooms, to include classroom organization, behavior management and modification of curriculum.

   b. All teachers will have an understanding of the roles and relationships of educational personnel as they relate to the needs of individuals with disabilities as special education and regular education are integrated and more effectively coordinated.

   c. Regular education teachers will have the skills necessary to consult and problem solve with special education personnel to meet the needs of individuals with disabilities who are being served in a regular education context.

   d. An Administrators' Academy will be developed for building principals. The Academy will offer ongoing

training for principals in areas relevant to interfacing special education and general education.

4 Meeting the Needs of Paraprofessionals

Paraprofessionals have become increasingly important in special education. With this increase in the number of paraprofessionals, comes the need to monitor and evaluate their effectiveness in dealing with children with special needs.

From this study came the training models and pilot testing of the materials. Based on this foundation, the following five year outcomes have been identified.

a. Paraprofessionals will participate in appropriate inservice training at the local level.

b. Special education teachers, related service personnel and building administrators will have the skills to work effectively with paraprofessionals.

c. Paraprofessionals will play a vital role in the programming for special education students as a part of a transdisciplinary team.

5. Meeting Technological Needs

Local administrative units find it increasingly more difficult to keep up with all the "paper work" that is required by regulations. In addition, they are being challenged to cluster their students with disabilities by need rather than by handicapping condition. Such movement requires a greater reliance on computerized management programs. In addition, teachers are being asked to individualize their programs where such individualization necessitates the use of more appropriate software.

The Department has initiated an intensive program of improving technology through inservice to staff, the fostering of the use of Specialnet and the development of a computerized management system and an computerized individualized education program. For these reasons, the following five year outcomes have been established:

a. Each administrative unit will have access to the computerized data management system and computerized individualized education program.

b. Each administrative unit will be utilizing Specialnet to receive and send electronically information concerning special education.

6. Meeting the Needs of Parents as Partners

The Colorado Department of Education believes that parents must be provided with meaningful opportunities for involvement in planning for their child's educational career. The ability to establish a working relationship between educators and families of children with disabilities is critical to the delivery of quality services. Such a partnership is characterized by open communication, trust and cooperation. It is only through this partnership that resources can be maximized to meet the individual unique needs of all children with disabilities.

a. All administrative units will include parents as partners in the assessment/staffing/IEP process.

b. All administrative units will have a functional parent involvement system.

c. Formalized parent support-information-training projects will exist in five different regions of the state.

XXI. ADDITIONAL REQUIREMENTS

A. Responsibility of the Colorado Department of Education for all education programs

The State Board of Education has the duty by statute to exercise general supervision over the public schools of the state and the educational programs maintained and operated by all state government agencies for persons who have not completed the twelfth grade level of instruction. The State Board of Education has the power to promulgate and adopt policies, rules, and regulations concerning the general supervision of the public schools of the state, and the educational programs maintained and operated by all state government agencies for persons who have not completed the twelfth grade level of instruction.

In accordance with Colorado`s Exceptional Children's Educational Act, "The general assembly, recognizing the obligation of the State of Colorado to provide educational opportunities to all children which will enable them to lead fulfilling and productive lives, declares that the purpose of this article is to provide means for educating those children who are exceptional. To this end, it is necessary to establish a continuum of services, which recognizes the capabilities of all state agencies including special classes in public schools and the establishment of special classes for children with disabilities who are confined to their homes or hospitals, and instruction in institutions of the state for exceptional children."..."further, the intent of this article is to assure that there is a coordination of all services available to children with disabilities and to promote the entering into agreements or contracts between school districts, other public agencies, and nonprofit organizations and residential child care facilities for the provision of appropriate services for children with disabilities."

Local administrative units shall make available special educational services for the education of any handicapped child between the ages of three through twenty-one (3 through 21) under the jurisdiction of the administrative unit, and which meet standards established by the State Board of Education.

Interagency agreements have been developed with the Colorado Department of Education and other public and private agencies providing services to children with disabilities. These agreements assure that children with disabilities who may be served in a variety of settings are appropriately evaluated, determined to be handicapped, provided with an Individual Educational Program, and provided with appropriate services that meet the Colorado Department of Education standards. Issues of jurisdiction and responsibilities are addressed by clearly defining agency responsibilities.

In addition, the Colorado Department of education mails the approved Annual Program Plan to all public agencies with a cover letter informing each public agency that implementation of procedural safeguards for children with disabilities and their parents shall be reviewed and monitored as part of the periodic on-site visit.

B. Policies and Procedures for Use of Part B Funds

The Colorado Department of Education has taken the position that because it has no responsibility for providing direct services to children with disabilities (except for the Colorado School for the Deaf and Blind), that a greater amount than the required 75 percent of the allocation should flow to those who have that responsibility. With this provision and with the provision that five percent (5%) is retained for administration, the Colorado Department of Education retains fifteen percent (15%) of the allocation at the Department to assist administrative units in programming for students with disabilities.

The application used by administrative units to apply for the use of EHA-B funds along with the administrative units' comprehensive plans describes the policies and procedures developed by administrative units in order to receive IDEA funds. The application contains assurances that the administrative unit is complying with provisions of IDEA and its regulations, as well as other applicable federal laws and regulations.

Administrative unit entitlements are determined by the Department using the Federal formula. Administrative units are notified of the entitlement and provided the opportunity to submit an application. All administrative units generate $7,500 or more, making it unnecessary to submit consolidated applications.

IDEA requirements related to the Goal of Full Educational Opportunity, Availability of a free appropriate education, identification, local and evaluation, confidentiality of personally identifiable information, availability of the plan to the public are described in other sections of the Plan.

C. Description and Use of Part B Funds

1. Proper use of funds by local administrative units and state operated programs.

   a. Administrative units and state operated programs that received IDEA funds may use IDEA funds only for the excess cost of providing special education and related services to eligible children and all costs must be directly attributable to the education of eligible children. IDEA funds received by an administrative unit must not be commingled with other funds.

   b. State and local funds shall not be replaced with IDEA funds on any single expenditure or any aggregate expenditures by an administrative unit or state operated program. State and local funds must be used to provide services to eligible children receiving services paid for with IDEA funds which, taken as a whole, are at least comparable to services provided to other eligible children.

   c. Administrative units and state operated programs shall maintain records which verify compliance with the excess cost, nonsupplanting, and comparability requirements for at least five (5) years after the completion of the project described in the local application.

d. Administrative units and state operated programs shall have on file and shall provide to the Department evidence, in such form as may be required, that children who receive special education and related services meet the eligibility requirements for participation in the IDEA program. Such records shall be kept on file until a count audit has been completed. After the conclusion of a count audit, records of the year audited and preceding years may be disposed of.

e. Administrative units and state operated programs shall maintain a record of all eligible children aged birth through twenty-one years, who are residents of the administrative unit. The child count shall be taken on December 1, and other times as required.

2. The Colorado Department of Education staff positions paid out of Part B Funds are described below.

The consultant position in the Special Education Services Unit of the Colorado Department of Education is generally filled by persons with graduate training and experience in an appropriate area depending upon the position.

The consultant duties vary with the areas of responsibility, but all consultants funded wholly or in part with Part B Funds have duties directly associated with Part B activities and responsibilities.

These duties include: program monitoring and management; fiscal monitoring and management; the provision of technical assistance to public agencies responsible for assuring a free appropriate public education, implementation of Colorado's complaint procedure, assisting in developing innovative programs; dissemination of promising practices; providing timely response to the Office of Special Education and the Office of Civil Rights' inquirys.

Classified staff funded by Part B funds have duties and responsibilities also directly attributable to the requirements of Part B. These support staff are appropriately trained individuals with skills to perform the following types of activities: clerical support for consultants in special education including typing, transcribing, and formulating; collecting data; assisting in reporting Federally required data; maintaining a work flow so as to respond to Part B requirements; assisting in auditing and monitoring activities.

3. Many of the program services and activities to be carried out with the Department's discretionary funds, Part B funds will be projects such as model programs, demonstration sites, technical assistance, and inservice training needs, assessment, evaluation, dissemination, participatory planning by agencies who train and hire special education professionals and are developed around the needs identified through onsites, surveys, evaluations, and the Colorado State Board of Education's Educational Priorities adopted annually and Comprehensive System of Personnel Development.

   The criteria developed for determining expenditure of the discretionary funds addresses the problem of direct services to children with disabilities and the problems encountered in staff development and support systems for children with disabilities. (Appendix F)

   a. The activities or projects to be funded are essential to the State of Colorado remaining in compliance with the provisions of federal requirements.

   b. The activity or project to be funded provides instructional and/or educationally related services to children with disabilities which, without the Colorado Department of Education's assistance, would be too burdensome for the local administrative unit to deliver on its own.

   c. The activity or project to be funded can be considered "model project" with applicability to the rest of the state.

   d. "Model project" must provide direct services to children with disabilities.

e. The activity or project to be funded assists children with disabilities in public agencies other than local administrative units; such activities or projects could not be implemented without assistance from the Colorado Department of Education.

4. Approximately fifty percent (50%) of the available discretionary funds are allocated for staff development and other support-type activities.

   This money is allocated based on the following criteria.

   a. To meet the requirements specified in the Comprehensive System of Personnel Development section of Colorado's Annual Program Plan.

   b. The activity to be funded addresses a general statewide "need" as determined by the Colorado Special Education Advisory Committee, the Colorado Comprehensive Personnel Preparation Committee, and the Special Education Services Unit personnel.

   c. The activity to be funded increases the opportunities for children with disabilities by increasing community awareness and responsibility toward handicapped individuals.

   d. The activity to be funded provides for more efficient systems of service delivery to handicapped children by increasing the utilization of innovative administrative approaches and technology.

5. Activities of the State Advisory Committee for Special Education.

Approximately $10,000 to $12,000 of Part B, five percent (5%) administration funds will be expended each year to support the activities of the State Advisory Committee for Special Education appointed by the State Board of Education to assist that body in its duty to provide means for educating children with disabilities. The State Advisory Committee meets monthly and participates actively in advising the State Board on matters regarding legislation, rules, regulation, policies, interagency agreements, assessments, program evaluation, annual federal plans, and other issues related to special education. It also comments publicly on the Annual Program Plan, on regulations, and procedures for distribution of Part B funds.

XXII. INTERAGENCY AGREEMENTS

A. Policy

In order to ensure the provision of a free appropriate public education to eligible students with disabilities, the Colorado Department of Education shall enter into interagency agreements with state and local agencies which have responsibility for housing or otherwise caring for students identified as being educationally handicapped.

B. Procedures

Each Interagency Agreement shall:

1. Ensure that those agencies not operated by the Department of Education or local education agencies provide assurances that education and educationally related services are provided consistent with the the provisions of this State Plan and applicable state and federal laws.

2. Contain provisions for assuring the right to education and full educational opportunities for all students identified as educationally handicapped.

3. Define the financial responsibility of each agency for providing a free appropriate public education.

4. Contain provisions for resolving interagency disputes.

Interagency agreements which meet the standards cited above shall be developed with the following state and local agencies:

Department of Corrections
Community Centered Boards
Department of Health
Department of Institutions
Mental Health Agencies
Department of Social Services
Residential Child Care Facilities
Division of Mental Health
Division of Vocational Rehabilitation

Division of Youth Services
State Board for Community Colleges
and Occupational Education

a. Agreement between the Department of Social Services and the Colorado Department of Education has been completed and is being implemented to assure that children with disabilities whose needs are such that it is necessary to remove them from their home or local school system for residential purposes will be provided a free appropriate education.

b. Agreement between Community Centered Boards (under the supervisory responsibility of the Department of Institutions) and the Colorado Department of Education has been completed and is being implemented to assure that children with disabilities whose needs are so severe or profound that they cannot be met in the local school system are able to be provided a free and appropriate education in the Community Centered Boards.

c. Agreement between the Department of Institutions and the Colorado Department of Education has been completed and is being implemented to assure that children with disabilities whose needs are so profound that they must be institutionalized are provided a free and appropriate education.

d. Agreement between the Department of Social Services, Division of Vocational Rehabilitation, the State Board for Community Colleges and Occupational Education, Division of Vocational Education and the Department of Education has been completed and is being implemented to assure that the career/vocational needs are considered in the provision of a free appropriate public education.

e. Agreement between the Department of Health and the Department of Education has been completed and is being implemented to assure that eligible children with disabilities are able to receive services through the Handicapped Children's Program and/or the Supplemental Security Income/Disabled Program.

f. Agreement between the Department of Institutions, Division of Mental Health, and the Colorado Department of Education has been completed and is being implemented to assure that outpatient care, day treatment, and inpatient care are provided children with disabilities whose needs are such that these services are deemed necessary.

g. Agreement between the Department of Corrections and the Colorado Department of Education has been completed and will be implemented to assure that eligible persons with disabilities in the custody of the Department of Corrections are provided a free appropriate public education.

XXIII. MONITORING SYSTEM

A. Policy

The Colorado Department of Education is responsible for a comprehensive monitoring system to gather, analyze, integrate and report ongoing information about policies, procedures and practices relating to education of children with disabilities in all administrative units and alternative settings. The principal objective of this system is the determination of whether each educational program for children with disabilities administered within the State meets educational standards established by the Department and requirements of ECEA, IDEA, EDGAR, and Family Educational Rights and Privacy Act (FERPA). This information is utilized as a barometer or constant pulse at both the state and local levels, not only to insure compliance with handicapped legislation, but also for the following purposes:

1. To insure that the needs of handicapped students are being met.

2. To become aware of the needs of all persons within the school and community systems, to include administrators, service providers, and parents whose activities impact the provision of FAPE to eligible students..

3 To determine the fidelity of program operation with policies and procedures.

4. To facilitate program design and evaluation.

5. To facilitate ongoing refinement of regulations and standards.

6. To identify needs for staff development.

7. To identify exemplary policies, procedures or practices which would serve as models.

B. Procedures

The comprehensive monitoring system includes the following six procedures which are implemented within a five year cycle.

Year One: Comprehensive Plan Review

Year two: Count Audit

File/Data Review (three months prior to onsite visitation)

Year Three: Onsite Visitation/Comprehensive Plan Review

Year Four: Follow-up

Year Five: Targeted Review

1. Comprehensive Plan Review

Each local education agency must submit a comprehensive plan to the Department which is a meaningful, working document reflecting the uniqueness of the administrative unit or agency and compliance with state and federal regulations including the State Plan. The plans are working documents of policies and procedures, to include current forms relating to the special education process, applicable local interagency agreements and contracts. The plans must include items required by State (2.03) and Federal (300.180, 182, 220-230) Regulations. The plan must be submitted by all Administrative Units. All alternative settings must have comprehensive plans which describe their educational programs.

a. All administrative units updated their local comprehensive plans during the 1988-89 and 89-90 school years. Thereafter, they will be reviewed as part of the five-year monitoring cycle. However each administrative unit shall be required to submit an annual application for Federal funds which will be reviewed for appropriateness by Special Education Services Unit personnel.

b. A file has been created in the Central Files entitled "Comprehensive Plan Revisions". Items will be filed throughout the year when changes in federal or state procedures are made which would in turn require amendments to the local comprehensive plans. In August of each year, these items are compiled and local Directors are informed of needed amendments which are to be submitted with their VI-B applications. Once every three years administrative units must revise their plans to incorporate all the changes and amendments from the previous years.

c. Copies of the Plan, review forms, report and all correspondence relating to the Plan are placed in the central files.

2. Count Audits

The Colorado Department of Education is responsible for compliance checks of student eligibility criteria for Federal annual count reports in Administrative Units, Colorado School for the Deaf and Blind, Division of Youth Services, regional centers, state hospitals and community centered boards. Follow-up of compliance issues is done as part of the Comprehensive Onsite Visitation.

a. The following major areas of noncompliance will be documents, and the administrative unit or agency will work with their representative from the Special Education Services Unit to correct existing deficiencies and/or implement procedures which will bring them into compliance with pertinent state and federal regulations.

(1) Documentation was not available to show that appropriate written notice was given to parents or guardians.

(2) Documentation was not available of required parental consents.

(3) Assessment data was inappropriate or incomplete.

(4) Required participants were not in attendance at the staffing or IEP meeting.

(5) There was lack of documentation that the staffing or IEP committee fulfilled all the procedures required in state and federal regulations.

b. The administrative unit or agency will be cited for non-compliance when eligible student records were determined to have major deficiencies as noted above.

c. Students will be determined to be ineligible to count in the following situations, and applicable federal funds will be recalled by the Department of Education.

(1) The student was not enrolled and receiving special education services on the date of the count.

(2) Parents/guardians were charged for the special education program.

(3) The student had graduated from a twelfth grade educational program through receipt of a diploma, certificate of completion, or general educational program (GED) certificate.

(4) An individualized educational program (IEP) was not in effect or was not reviewed within the last twelve months.

(5) No initial or triennial meeting to determine eligibility had occurred within the last three years.

(6) The student had not been determined to be handicapped under Colorado's Rules for the Administration of the Exceptional Children's Education Act and under the requirements of Public Law 94-142.

(7) The student did not meet the age requirements for the specific count.

d. A computer program will be used to draw a sample from the administrative unit or agency's federal count(s) for the previous year. The size of the sample will be two percent of the total students, but not less than thirty, and will include a proportionate number of students from each federal count (Chapter I, Programs for the Handicapped and Public Law 94-142) and from each handicapping condition.

e. For those students included in the sample, the count audit team will review each student file according to the count audit checklist developed by the Special Education Services Unit, and appropriate information will be recorded on the form.

f. To assure inter-auditor reliability, no auditor will review all records for a specific handicapping condition. Also, if an auditor's preliminary findings indicate a student may be ineligible, another auditor must verify ineligibility.

g. The count audit team will summarize all information and complete the "Student Count Audit Checklist Summary Report." This summary and all checklists will be returned to the Department within two weeks of the audit.

h. Within two months of the audit, the Department will prepare a report which will include the names of any students determined to be ineligible to count, and the reason(s) for ineligibility; and major areas of noncompliance.

i. The administrative unit or agency will then be given two months to submit any missing material which was not available in the student records at the time of the audit, and the report will be amended accordingly.

j. Reports, corrective actions and other correspondence relating to the count audit are filed in the central files. Follow up on all count audit concerns will take place as part of the comprehensive onsite visitation.

3. File/Data Review

Data routinely collected by the Department is utilized as part of the information base in planning for the comprehensive on-site visitation.

Records of concerns, complaints and hearing are kept and analyzed as to nature and patterns. Information is then utilized for possible investigation during the onsite visitations and/or for the provision of technical assistance.

If circumstances warrant procedures different from Colorado's rules, and can be demonstrated to be in the best interests of children, the process of variance allows this to happen with close monitoring. This would allow for piloting new ideas which may, at some point, suggest changes in Colorado's rules and regulations. If an administrative unit believes that a variation from State rules and regulations is justified by indigenous conditions, it may file a claim for variance. A variance request is not granted, however, if it would conflict with federal requirements or cause harm to children with disabilities. Approved variances are in force as specified in the notice of approval unless revoked for cause by the Department. Variances are monitored as part of the comprehensive and/or targeted onsite visitation.

The following information is compiled prior to the onsite visitation and is utilized and is utilized as a base of information for the visitation.

a.. Contextual Factors for Effectiveness Indicators for Special Education

(1) Demographic

(2) Resources

(3) Wealth

(4) Staffing

(5) Readiness

(6) Agency Resources

(7) Post High School Resources

(8) Student Population

b. Informal Concerns/Complaints

All CDE Special Education Unit Staff record all personal and telephone contacts with parents, administrators and/or service providers which involve issues of concern or complaint utilizing the Concern/Complaint Form. The forms are logged and filed in the central files.

c. Formal Complaints/Hearings

Copies/records of all complaints and due process hearings and follow-up are logged and filed in the central files.

d. Technical Assistance Requests

All CDE Special Education Unit Staff record all requests for technical assistance which result in assistance being given on site utilizing the Technical Assistance Form. The forms are logged and filed in the central files.

e. Temporary Teacher Eligibility

A list of staff on temporary teacher eligibility is recorded yearly and filed in the central files.

f. Variances

4. Onsite Visitation

A planned, comprehensive on-site visitation to all local units/agencies, which serves as a follow-up to the information gathered in the previous two years, is conducted. Focus is on implementation of the policies and procedures previously reviewed. The visitation is primarily utilized to (1) assess program effectiveness and efficiency, (2) to know school and community systems and identify local needs, (3) determine the fidelity of program operation with policies and

procedures, (4) provide recognition and affirmation, and (5) identify exemplary policies, procedures or practices which could serve as models.

a. Entry Procedures:

An entry session is scheduled to include a local welcome, onsite purpose and unit overview. The Unit Overview includes demographics, philosophy, structure, issues and directions.

b. Information Gathering Procedures:

Information is gathered relating to the attached report format through interviews (individual, cluster, telephone) with as many individuals as possible but at the minimum the following:

(1) director/assistant

(2) child find coordinator

(3) at least ten percent of the principals/assistants at each level but no less than one

(4) at least sixty percent of the case managers and/or staffing team facilitators

(5) at least sixty percent of the service providers in each service area

(6) chairperson, advisory committee

(7) at least ten percent of the parents

c. A formal record review is conducted and program consultants review IEPs for at least 1% of the students served by the persons interviewed.

d. Two to five staffings/IEP meeting/Reviews will be attended by some members of the team as part of the total review if at all possible.

e. Questionnaires have been developed and utilized for each of the program areas. These include items from the Core Process/Compliance Interview Questions and Quality Indicators.

f.. Exit Procedures:

Exit report(s) are scheduled as part of the visitation, according to the needs of the unit and findings of the onsite team. A written report is prepared within 60 days.

g.. Follow-up:

The LEA must submit within 60 days a response to any corrective actions relating to non compliance, listed in the report. A letter of acceptance of the response or negotiated response is sent within 60 days of the receipt of the response.

5. Onsite Report:

a. Format

See Appendix G.